

Exhibit 2

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: JOHNSON & JOHNSON MDL NO.:
TALCUM POWDER PRODUCTS 16-2738 (MAS)(RLS)
MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY
LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, ATLANTIC COUNTY

BRANDI CARL, DOCKET NO.
Plaintiff, ATL-L-06546-14

V. TALC-BASED POWDER

JOHNSON & JOHNSON, ET AL., PRODUCTS LITIGATION
Defendants. CASE NO. 300

DIANA BALDERRAMA, DOCKET NO.
Plaintiff, ATL-L-6540-14

V. TALC-BASED POWDER
JOHNSON & JOHNSON, ET AL., PRODUCTS LITIGATION
Defendants. CASE NO. 300

EXPERT DEPOSITION OF
KATHLEEN M. SUTCLIFFE, PHD
Tuesday, May 28, 2024, 9:11 a.m.

Reported by: Denise Dobner Vickery, CRR, RMR
JOB NO.: 6717900

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<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 For PLAINTIFFS:</p> <p>4 LEVIN PAPATONIO RAFFERTY PROCTOR</p> <p>5 BUCHANAN O'BRIEN BARR & MOUGEY, PA</p> <p>6 BY: CHRISTOPHER V. TISI, ESQ.</p> <p>7 316 South Baylen Street, Suite 600</p> <p>8 Pensacola, FL 32502-5996</p> <p>9 850.435.7999</p> <p>10 ctisi@levinlaw.com</p> <p>11</p> <p>12</p> <p>13 For MDL PLAINTIFFS (Via Zoom):</p> <p>14 BEASLEY ALLEN</p> <p>15 BY: RYAN BEATTIE, ESQ.</p> <p>16 BY: DR. MARGARET M. THOMPSON, ESQ.</p> <p>17 BY: LEIGH O'DELL, ESQ.</p> <p>18 218 Commerce Street</p> <p>19 Montgomery, AL 36103-4160</p> <p>20 308.874.3186</p> <p>21 ryan.beattie@beasleyallen.com</p> <p>22 margaret.thompson@beasleyallen.com</p> <p>23 leigh.odell@beasleyallen.com</p> <p>24</p>	<p style="text-align: right;">Page 5</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 For PERSONAL CARE PRODUCTS COUNCIL (PCPC)</p> <p>4 (Via Zoom):</p> <p>5 REILLY MCDEVITT & HENRICH PC</p> <p>6 BY: SUZANNE I. TURPIN, ESQ.</p> <p>7 3 Executive Campus, Suite 310</p> <p>8 Cherry Hill, NJ 08002</p> <p>9 856.317.7180</p> <p>10 sturpin@rmh-law.com</p> <p>11</p> <p>12</p> <p>13</p> <p>14 ALSO PRESENT:</p> <p>15 JEFFERY WRIGHT, Paralegal</p> <p>16 LEVIN PAPATONIO</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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<p style="text-align: right;">Page 14</p> <p>1 PROCEEDINGS</p> <p>2 ---</p> <p>3 KATHLEEN M. SUTCLIFFE, PHD</p> <p>4 called for examination, and, after having been</p> <p>5 duly sworn, was examined and testified as</p> <p>6 follows:</p> <p>7 ---</p> <p>8 EXAMINATION</p> <p>9 ---</p> <p>10 BY MR. TISI:</p> <p>11 Q. Good morning.</p> <p>12 A. Good morning.</p> <p>13 Q. Please state your name.</p> <p>14 A. Kathleen M. Sutcliffe.</p> <p>15 Q. And are you what's called a -- you</p> <p>16 have a PhD in Organization Theory and Behavior?</p> <p>17 A. Correct.</p> <p>18 Q. And would it be fair that you</p> <p>19 describe yourself as an expert in what is called</p> <p>20 organization behavior and theory?</p> <p>21 A. Organization science, organization</p> <p>22 behavior, organization theory. Correct.</p> <p>23 Q. Okay. And you are designated in</p> <p>24 this case as an expert in that field, correct?</p>	<p style="text-align: right;">Page 16</p> <p>1 BY MR. TISI:</p> <p>2 Q. And you can use your own if you</p> <p>3 would prefer.</p> <p>4 A. I would prefer.</p> <p>5 Q. Does this contain the opinions</p> <p>6 you're prepared to give in this case?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. You know I represent women</p> <p>9 who claim that the use of Johnson & Johnson's baby</p> <p>10 powder caused them to develop ovarian cancer,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And you understand that the</p> <p>14 plaintiffs I represent allege that J&J has known</p> <p>15 for decades that talc and baby powder may pose --</p> <p>16 may pose a health risk to consumers and that they</p> <p>17 covered up these health risks, correct?</p> <p>18 A. Would you restate your question,</p> <p>19 please?</p> <p>20 Q. Yes.</p> <p>21 You understand that the plaintiffs</p> <p>22 that I represent allege that J&J has known for</p> <p>23 decades that talc in its baby powder may pose</p> <p>24 health risks to consumers?</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Correct.</p> <p>2 MR. TISI: All right. I'd</p> <p>3 like to hand you what is marked as</p> <p>4 Exhibit Number 1, which is a copy of your</p> <p>5 report but I -- excuse me. A copy of</p> <p>6 your curriculum vitae.</p> <p>7 (Document marked for</p> <p>8 identification as Sutcliffe Exhibit 1.)</p> <p>9 BY MR. TISI:</p> <p>10 Q. And this is -- this is curriculum</p> <p>11 vitae.</p> <p>12 Is this your professional resumé?</p> <p>13 A. Correct.</p> <p>14 Q. Is it complete as of today?</p> <p>15 A. Let me just check one thing.</p> <p>16 If it was -- came from the report,</p> <p>17 it is complete as of today.</p> <p>18 MR. TISI: Okay. And Exhibit</p> <p>19 Number 2 I'm going to have marked,</p> <p>20 although I see you have in front of you,</p> <p>21 your expert report with appendices and</p> <p>22 exhibits.</p> <p>23 (Document marked for</p> <p>24 identification as Sutcliffe Exhibit 2.)</p>	<p style="text-align: right;">Page 17</p> <p>1 A. I saw that in the complaint.</p> <p>2 Q. Okay. And you understand that the</p> <p>3 plaintiffs that I represent contend that J&J and</p> <p>4 its related consumer company ignored over half a</p> <p>5 century of data and failed to adequately ensure</p> <p>6 the safety to its customers, correct?</p> <p>7 A. I understand the claim.</p> <p>8 Q. And you understand that we claim</p> <p>9 that they should have mitigated those risks by</p> <p>10 doing several things: Number one, replacing talc</p> <p>11 with cornstarch in its powder products, correct?</p> <p>12 A. I understand the complaint.</p> <p>13 Q. And you understand that we claim</p> <p>14 that they should have instructed women not to use</p> <p>15 talc for feminine hygiene, correct?</p> <p>16 A. I understand the claim.</p> <p>17 Q. Okay. And you understand that we</p> <p>18 claim that they failed to warn consumers and women</p> <p>19 of the potential risk of ovarian cancer, correct?</p> <p>20 A. I don't have the complaint in front</p> <p>21 of me, but I understand the claim.</p> <p>22 Q. Okay. And you understand we claim</p> <p>23 that they failed to study adequately their</p> <p>24 products, correct?</p>

<p style="text-align: right;">Page 18</p> <p>1 A. I -- I don't recall that specific 2 sentence, but I understand the claim. 3 Q. Okay. Now, in your report -- 4 MS. TURPIN: I hate to 5 interrupt, but we can't really hear 6 Dr. Sutcliffe's testimony. We can hear 7 the questioning very clearly, but her -- 8 I think her volume needs to be turned up. 9 MR. EWALD: Kathleen, speak up 10 a little bit more. 11 THE WITNESS: Okay. 12 MR. EWALD: I know she has 13 allergies. 14 THE WITNESS: I'm a little -- 15 I have a little -- yeah. Okay. 16 MR. EWALD: Let me see the 17 mic. 18 THE WITNESS: I will try. 19 MR. TISI: Let's go off the 20 record, if you don't mind. 21 MR. EWALD: Yeah. 22 (Recess: 9:15 a.m. - 23 9:15 a.m.) 24 BY MR. TISI:</p>	<p style="text-align: right;">Page 20</p> <p>1 A. No, that's not correct. 2 Q. What is the methodology called? 3 A. The methodology is a qualitative 4 methodology. 5 Q. What is it called? 6 A. It is called a qualitative 7 methodology. 8 Q. That doesn't have a name in your -- 9 in your field of practice? 10 Qualitative methodology is something 11 that can be used across -- across disciplines. 12 Do you have anything in your field 13 where you identify it as a methodology? 14 A. A qualitative methodology can be 15 used across disciplines, and it is used in the 16 area of organization science. 17 Q. Okay. Now, particularly you 18 reviewed the reports of David Kessler, former FDA 19 Commissioner, correct? 20 A. I have looked at many -- at many 21 reports. I'm not sure what you're asking. 22 Q. I'm asking you: You've reviewed the 23 expert report of David Kessler, an FDA 24 Commissioner, correct?</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Now, in your report, Exhibit 2 Number 2, you have a section entitled "Plaintiffs' 3 Causal Narrative" where you characterize what you 4 believe to be the plaintiffs' claims, correct? 5 A. Correct. 6 Q. All right. And you call us and our 7 expert's interpretation of the data and the 8 evidence cherry-picking, don't you? 9 A. Yes. 10 Q. And you mention that several times 11 in your report, correct? 12 A. Yes. 13 Q. You would never want to be accused 14 of that, correct? 15 A. It is a bad practice. 16 Q. And you believe that your 17 methodology does not -- accounts for 18 cherry-picking, correct? 19 A. My methodology is a well-known, 20 established qualitative methodology that is very 21 -- that is excellent for the kind of work that I 22 have done. 23 Q. Okay. And you call that sensemaking 24 methodology, correct?</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Yes, I did. 2 Q. Okay. 3 A. Which did not include any kind of 4 methodology. 5 Q. Okay. That wasn't my question. 6 Please answer my questions, ma'am. 7 A. I reviewed the report, and as I 8 said, it didn't contain a methodology. 9 Q. That wasn't my question. 10 Did you review the report? 11 A. I reviewed the report. 12 MR. EWALD: She answered your 13 question. 14 BY MR. TISI: 15 Q. Okay. Did you -- did you review the 16 report of George Newman, an expert in marketing 17 and a psychologist, correct? 18 A. I did. 19 Q. Okay. Did you review any other 20 reports that you can remember of any other 21 plaintiffs' experts? 22 A. I do not. I may have reviewed 23 reports over the five years I've been studying 24 this. I don't remember.</p>

<p style="text-align: right;">Page 22</p> <p>1 Oh, yeah. I reviewed David or --</p> <p>2 oh, my gosh. Now I'm blocking on his name but,</p> <p>3 anyway, I reviewed reports last fall.</p> <p>4 Q. Do you remember who it was?</p> <p>5 A. David Michaels.</p> <p>6 Q. Okay. And have you reviewed any</p> <p>7 depositions --</p> <p>8 A. I --</p> <p>9 Q. -- of any experts?</p> <p>10 A. I reviewed Dr. Kessler's deposition.</p> <p>11 Q. Okay. Did you review Dr. Newman's</p> <p>12 deposition?</p> <p>13 A. No.</p> <p>14 Q. And you believe their analysis is</p> <p>15 flawed because they engage in what you call</p> <p>16 hindsight bias, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And to combat hindsight bias,</p> <p>19 you say your methodology considers what was being</p> <p>20 said and done in the medical and scientific</p> <p>21 community and by other stakeholders and what they</p> <p>22 did at the time, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And not with the benefit of</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Okay. And what is sensemaking?</p> <p>2 Explain it to me as if I was your Uncle Charlie.</p> <p>3 Tell me in a very basic way.</p> <p>4 A. In a basic way, sensemaking is the</p> <p>5 process of how information enters an organization,</p> <p>6 how it's interpreted, how it's acted upon, how it</p> <p>7 is reaffirmed. Essentially, it answers two</p> <p>8 questions: What's the story? And now what?</p> <p>9 Q. Okay. What's the story? And now</p> <p>10 what?</p> <p>11 And that's dependent upon the things</p> <p>12 that were available, for example, in this case,</p> <p>13 the medical and scientific literature, correct?</p> <p>14 A. It's dependent on many kinds of</p> <p>15 things.</p> <p>16 Q. Okay. I'm asking you the kinds of</p> <p>17 examples.</p> <p>18 What was being said in the medical</p> <p>19 and scientific committee -- scientific community</p> <p>20 one of the things that would come into an</p> <p>21 organization like this?</p> <p>22 A. It's -- I guess I would back up --</p> <p>23 Q. Uh-huh.</p> <p>24 A. -- and I would say that it's</p>
<p style="text-align: right;">Page 23</p> <p>1 what we know now, correct?</p> <p>2 A. Not -- not with the benefit of what</p> <p>3 we know now.</p> <p>4 Q. All right. So --</p> <p>5 A. I wanted to understand the context</p> <p>6 of action from the perspective of the</p> <p>7 participants.</p> <p>8 Q. At the time?</p> <p>9 A. What was happening at the time.</p> <p>10 Q. And so it's important for you as an</p> <p>11 expert to actually look at the data as it</p> <p>12 developed over time, correct?</p> <p>13 A. I looked at a large amount of data</p> <p>14 over time. In fact, a large amount of data over</p> <p>15 decades.</p> <p>16 Q. Perfect, and we're going to ask --</p> <p>17 I'm going to ask some of those questions.</p> <p>18 Okay?</p> <p>19 A. (Nods head).</p> <p>20 Q. Okay. So what is sensemaking?</p> <p>21 We've talked about that as part of your process.</p> <p>22 What is sensemaking?</p> <p>23 A. Sensemaking is a well-established</p> <p>24 conceptual framework in organization theory.</p>	<p style="text-align: right;">Page 25</p> <p>1 dependent on thinking about how is organization --</p> <p>2 how is information coming into an organization.</p> <p>3 Q. Okay.</p> <p>4 A. Is it -- is it broad? Is it deep?</p> <p>5 Is it narrow? Etc.</p> <p>6 Q. Would you expect a company that</p> <p>7 is -- that is marketing consumer product where</p> <p>8 science is an issue to keep up with the science</p> <p>9 and medical information in the community at the</p> <p>10 time?</p> <p>11 A. I -- the best practices in</p> <p>12 sensemaking reveal that you would like to have a</p> <p>13 broad and rich understanding of what's happening</p> <p>14 in the environment.</p> <p>15 Q. Okay. And the environment would</p> <p>16 include the medical -- in this case -- would</p> <p>17 include what's happening in the medical and</p> <p>18 scientific community, correct?</p> <p>19 A. In this case, the environment would</p> <p>20 include a lot of things, including what's going on</p> <p>21 in the scientific community.</p> <p>22 Q. As well as what's going on in the</p> <p>23 regulatory community, correct?</p> <p>24 A. As well as what's going on in the</p>

<p style="text-align: right;">Page 26</p> <p>1 regulatory community, correct.</p> <p>2 Q. And academic community, correct?</p> <p>3 A. Correct.</p> <p>4 Q. All right. Now, applying this</p> <p>5 methodology, you have concluded in your report</p> <p>6 that -- and I'm quoting on page 81. You can check</p> <p>7 it if you want.</p> <p>8 "Over the course of decades, Johnson</p> <p>9 & Johnson paid attention to knowledge in the</p> <p>10 external environment; it devoted attention and</p> <p>11 resources to the interpretation of that knowledge;</p> <p>12 and it took actions as a result of that</p> <p>13 knowledge."</p> <p>14 Correct?</p> <p>15 A. Can you tell me where you're</p> <p>16 reading? Because I don't see it.</p> <p>17 Q. Yeah. Page 81.</p> <p>18 A. Right.</p> <p>19 Q. Paragraph 189.</p> <p>20 A. Okay. Yep.</p> <p>21 Q. Okay. And you say that you would</p> <p>22 have expected a company like J&J to have looked</p> <p>23 at -- out for the well-being of its consumers,</p> <p>24 correct?</p>	<p style="text-align: right;">Page 28</p> <p>1 A. I have to say, I understand that</p> <p>2 it's -- it's a cosmetic product and I have not --</p> <p>3 I don't know the ins and outs of all the</p> <p>4 regulatory language.</p> <p>5 Q. I didn't ask you whether you knew</p> <p>6 the ins and outs of it.</p> <p>7 Do you know that it is covered by</p> <p>8 the Federal Food, Drug, and Cosmetic Act?</p> <p>9 A. I know that the FDA -- that J&J</p> <p>10 works closely with the FDA.</p> <p>11 Q. And so they are subject to the</p> <p>12 Federal Food, Drug, and Cosmetic Act?</p> <p>13 A. Okay. I don't know the Cosmetic</p> <p>14 Act.</p> <p>15 Q. Okay.</p> <p>16 A. So I can't say one way or another.</p> <p>17 Q. Now, it says in your report,</p> <p>18 Exhibit 2, page 7, paragraph 20, as part of your</p> <p>19 narrative of the plaintiffs' claims --</p> <p>20 MR. GOLOMB: Sorry. What</p> <p>21 page?</p> <p>22 MR. TISI: 7.</p> <p>23 THE WITNESS: Page 7 in my</p> <p>24 report.</p>
<p style="text-align: right;">Page 27</p> <p>1 A. I'm sorry. Your question didn't</p> <p>2 make sense to me.</p> <p>3 Q. Okay. You would expect a company</p> <p>4 like J&J to look out for the well-being of its</p> <p>5 consumers, correct?</p> <p>6 A. That's what my analysis is all</p> <p>7 about.</p> <p>8 Q. Okay. And before we go any further,</p> <p>9 let me ask you a couple preliminary questions</p> <p>10 before we go much deeper.</p> <p>11 First, you understand that Johnson's</p> <p>12 talcum powder products are in a class of consumer</p> <p>13 products called cosmetics, correct?</p> <p>14 A. I understand it's a cosmetic</p> <p>15 product.</p> <p>16 Q. All right. And these are marketed</p> <p>17 and manufactured -- these cosmetics are subject to</p> <p>18 the Food, Drug, and Cosmetic Act, correct?</p> <p>19 A. I don't know the ins and outs of the</p> <p>20 regulations, but I understand that -- that it's a</p> <p>21 cosmetic product.</p> <p>22 Q. Well, you understand that it is --</p> <p>23 it is subject to the Federal Food, Drug, and</p> <p>24 Cosmetic Act. Either you know that or you don't.</p>	<p style="text-align: right;">Page 29</p> <p>1 BY MR. TISI:</p> <p>2 Q. Paragraph 20.</p> <p>3 A. Yep.</p> <p>4 Q. Very last sentence says:</p> <p>5 "The fact that J&J's baby powder was</p> <p>6 an effective and successful product over many</p> <p>7 decades is not in dispute."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Do you understand that J&J</p> <p>11 cannot represent or advertise that these powders</p> <p>12 have any medical benefit or effect on human</p> <p>13 beings? Do you have any understanding about that</p> <p>14 whatsoever?</p> <p>15 A. I have an understanding that it --</p> <p>16 that the product is not a medical product, but</p> <p>17 clinically it has many, many uses.</p> <p>18 Q. Okay.</p> <p>19 A. And, you know, it's -- I mean, for</p> <p>20 people who have urticaria. It's really important</p> <p>21 for people who have fungus infections, and it can</p> <p>22 soothe them. So it has clinical properties.</p> <p>23 Q. Do you understand that -- that it is</p> <p>24 not -- it is not approved as a medication and no</p>

<p style="text-align: right;">Page 30</p> <p>1 representations can be made about its 2 effectiveness as a -- as a medical product? 3 A. I -- 4 Q. You don't know? 5 A. I said, it is not a medical product. 6 Q. Okay. 7 A. It is not -- it is not a medical 8 product. I said that in my last answer. 9 Q. And you know that no claims could be 10 made as in terms of effectiveness as a medical 11 product, correct? 12 A. I -- I -- 13 Q. You don't know? 14 A. It's not a medical product, and as 15 far as I know, there are no claims made about a 16 medical product. 17 Q. Okay. Second, you know over the 18 years J&J advertised Johnson's Baby Powder as 19 pure, correct? 20 A. I have seen marketing. 21 Q. Okay. That's not my -- you need to 22 answer my question. 23 Do you understand that over the 24 years J&J has advertised the product as pure talc?</p>	<p style="text-align: right;">Page 32</p> <p>1 has been asbestos-free, correct? 2 A. If you want to show me something 3 where it says that. 4 Q. You've reviewed the -- you've 5 reviewed thousands of pages? 6 A. I have. 7 Q. Okay. You know that they have 8 represented that talc is asbestos-free, correct? 9 A. The institutionalized knowledge is 10 that talc is asbestos-free. Correct. 11 Q. Okay. Third, you don't dispute, do 12 you, that well over half a century there have been 13 questions raised in the medical and scientific 14 community relating to the safety of talc, 15 including whether it could cause ovarian cancer? 16 A. I'm a little concerned about the 17 general nature of your question, and so is there's 18 something that you'd like me to take a look at? 19 Q. I want you -- I want to ask you the 20 question that I'm asking you, ma'am. 21 Over the past five decades, have you 22 seen reference to various articles, papers, etc., 23 that there have been concerns about talc and 24 whether or not talc causes ovarian cancer?</p>
<p style="text-align: right;">Page 31</p> <p>1 A. I have seen its advertisements as 2 pure talc. 3 Q. Okay. And pure enough to be put on 4 babies, correct? 5 A. I have seen that language. 6 Q. And pure enough to use on the most 7 intimate parts of a woman's body, correct? 8 A. I have seen marketing materials. 9 Q. That say that? 10 A. Yes. 11 Q. Okay. You need to actually answer 12 my question, if you don't mind. Saying "marketing 13 materials" doesn't answer my question. 14 A. Okay. 15 Q. Okay. Thank you. 16 You understand that the only 17 ingredients that ever been listed on talc -- on 18 Johnson's Baby Powder are talc and fragrance, 19 correct? 20 A. I have not looked at the ingredients 21 on the product. So I can't really answer your 22 product -- your question. Sorry. 23 Q. You understand that Johnson & 24 Johnson has always represented talc was and always</p>	<p style="text-align: right;">Page 33</p> <p>1 A. There has been -- over the past 2 decades have been allegations raised at various 3 times, at which I think about as disruptive 4 ambiguity. 5 Q. Okay. In terms of whether or not 6 talc can cause ovarian cancer? 7 A. I have seen -- I have seen lots of 8 things related to asbestos and related to the 9 safety of the product, right. 10 Q. Okay. Including whether or not talc 11 can cause ovarian cancer? 12 A. It has been -- it has -- that has 13 been raised. 14 Q. Okay. And it has been something 15 that has been fairly consistent, even as of today, 16 as to whether talc can cause ovarian cancer. 17 True? 18 MR. EWALD: Objection to form. 19 THE WITNESS: I don't -- I 20 don't know what "consistent" means. 21 All I can say is that, yes, 22 that the issue has been raised and I've 23 heard about the issue. Correct. 24 BY MR. TISI:</p>

<p style="text-align: right;">Page 34</p> <p>1 Q. Okay. It was raised in the 1970s in</p> <p>2 the Henderson paper where they found talc in the</p> <p>3 ovaries of women with ovarian cancer, correct?</p> <p>4 A. I would have to take another look at</p> <p>5 the Henderson paper because I don't remember it.</p> <p>6 Q. Do you remember that there was a</p> <p>7 study in the 1970s that talked about talc in</p> <p>8 ovaries of women with ovarian cancer?</p> <p>9 A. Again, I do not recall specifically.</p> <p>10 I probably reviewed that paper. I don't remember</p> <p>11 it.</p> <p>12 Q. Do you remember in the 1980s there</p> <p>13 were epidemiology studies by, for example,</p> <p>14 Dr. Cramer?</p> <p>15 A. I am aware of Dr. Cramer's study,</p> <p>16 which of course was, you know, called into</p> <p>17 question.</p> <p>18 Q. Okay. Are you aware that there are</p> <p>19 plenty of other studies in the 1990s, 2000s, 2010s</p> <p>20 relating to the question of whether or not talc is</p> <p>21 associated with the risk of ovarian cancer,</p> <p>22 correct?</p> <p>23 MR. EWALD: Objection to form.</p> <p>24 THE WITNESS: I -- I know</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. I'm not asking --</p> <p>2 MR. EWALD: Hold on. You're</p> <p>3 talking over her a couple times, Chris.</p> <p>4 I know it's inadvertent, but you just let</p> <p>5 her finish her answer to your questions.</p> <p>6 BY MR. TISI:</p> <p>7 Q. Okay. You need to answer my</p> <p>8 question.</p> <p>9 My question is: Do you know whether</p> <p>10 or not in the context of the public literature</p> <p>11 there were questions raised about whether or not</p> <p>12 additional steps ought to be taken to -- you need</p> <p>13 to -- you're about ready to answer my question.</p> <p>14 A. I -- again --</p> <p>15 Q. Okay.</p> <p>16 A. -- you know, if you -- if you want</p> <p>17 me to look at a specific --</p> <p>18 Q. Oh, I'm going to.</p> <p>19 A. -- document, that would be fine.</p> <p>20 Q. I'm going to.</p> <p>21 A. I'm not opining on the epidemiology</p> <p>22 and -- and so I can't say.</p> <p>23 Q. You didn't -- you didn't actually --</p> <p>24 before you start answering my question, you didn't</p>
<p style="text-align: right;">Page 35</p> <p>1 there have been studies. I have not</p> <p>2 reviewed all of the scientific literature</p> <p>3 because I'm not an epidemiologist, but I</p> <p>4 am aware that there have been studies</p> <p>5 conducted.</p> <p>6 BY MR. TISI:</p> <p>7 Q. Well, you are aware -- and we'll</p> <p>8 talk about this -- but you are aware that during</p> <p>9 the course of those studies that recommendations</p> <p>10 were made to the company to do the things that we</p> <p>11 talked about before: warnings, changing to</p> <p>12 cornstarch, instructions to women not using -- not</p> <p>13 using talc in their -- in their private areas, to</p> <p>14 do additional studies.</p> <p>15 You remember all of those, correct?</p> <p>16 MR. EWALD: Objection to form.</p> <p>17 Go ahead.</p> <p>18 THE WITNESS: Again, I did</p> <p>19 not do a review of all of the scientific</p> <p>20 literature because I'm not an</p> <p>21 epidemiologist and I'm not --</p> <p>22 BY MR. TISI:</p> <p>23 Q. I'm not asking --</p> <p>24 A. -- opining on that today.</p>	<p style="text-align: right;">Page 37</p> <p>1 let me finish my question. So let me ask you the</p> <p>2 question.</p> <p>3 In the context of the literature,</p> <p>4 there were discussions about whether or not</p> <p>5 additional steps needed to be taken to protect</p> <p>6 women from the potential for ovarian cancer.</p> <p>7 Do you know that to be true or not</p> <p>8 true?</p> <p>9 A. It would be good if you were giving</p> <p>10 me a document --</p> <p>11 Q. I will.</p> <p>12 A. -- that I can specifically look at.</p> <p>13 MR. EWALD: Well, Chris, it</p> <p>14 keeps happening where she is clearly in</p> <p>15 the middle of her answer and you are</p> <p>16 interrupting her.</p> <p>17 MR. TISI: I will answer. I</p> <p>18 will show you.</p> <p>19 MR. EWALD: So let her finish</p> <p>20 her answer first and then you can --</p> <p>21 THE WITNESS: Okay.</p> <p>22 MR. EWALD: -- follow up.</p> <p>23 Finish your answer.</p> <p>24 BY MR. TISI:</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. You need to answer my question, 2 though. 3 I will show -- I promise you, I will 4 show you studies where recommendations were made 5 about -- of what the company ought to do, as part 6 of sensemaking process, to understand what was 7 going on at the time in realtime. I will show you 8 those documents. 9 But as a general matter, do you 10 understand that there were recommendations made to 11 warn to change to cornstarch study? 12 A. I answer again that I have not done 13 a systematic analysis of all the literature -- 14 Q. Okay. 15 A. -- with respect to cancer, ovarian 16 cancer. 17 Q. Okay. Well, you know that 18 cornstarch powder has been available for over half 19 a century, correct? 20 A. I know that cornstarch powder has 21 been available since the 1970s. 22 Q. Okay. And you know that it was 23 actually developed -- and you mentioned this in 24 your report -- as an alternative -- initially as</p>	<p style="text-align: right;">Page 40</p> <p>1 sense then and we can't continue in an action, 2 then we might want to do something else. 3 But by the end of the 1970s, the 4 ambiguity was gone. Testing had been established. 5 Multilevels of testing had been established. 6 And I do also want to say that, you 7 know, there were other -- other starches that J&J 8 was looking at, rice, etc., and it was not a 9 replacement product because it had different 10 characteristics. 11 Q. Okay. That wasn't my question. 12 Okay? So you need to focus on my question now. 13 MR. EWALD: She answered your 14 question, but go ahead. 15 BY MR. TISI: 16 Q. So my question was: In the 1970s, 17 cornstarch was being developed, at least initially 18 until you say in the late 1970s when destructive 19 disruptive ambiguity was resolved, as a potential 20 replacement for talcum powder. 21 True or not true? 22 A. Not true. 23 Q. Okay. All right. Next question. 24 Did you see any evidence in your</p>
<p style="text-align: right;">Page 39</p> <p>1 an alternative or replacement for talc products 2 because of safety issues that were being raised in 3 the 1970s, correct? 4 A. That -- 5 MR. EWALD: Object to the 6 form. 7 THE WITNESS: I have a 8 different understanding. 9 BY MR. TISI: 10 Q. Okay. Could you look at paragraph 11 116 of your report, please. 12 A. Sure. 13 Q. Do you see where it says: 14 "J&J began a second phase of active 15 development of a cornstarch-based baby powder" at 16 the time that there were attacks on the product. 17 A. Yes, I understand that that's, you 18 know, that was something that came from the 19 sensemaking. There was a lot of disruptive 20 ambiguity. 21 But it was not a replacement. It 22 was not -- which should be expected. Because as I 23 said here, with the process of sensemaking, if we 24 go to my Footnote 200, that when things don't make</p>	<p style="text-align: right;">Page 41</p> <p>1 review of the record that Johnson & Johnson could 2 not have manufactured cornstarch for its baby 3 powder products at any time over the past 60 4 years? 5 A. I beg your pardon. I don't 6 understand the question. 7 Q. Do you contend that J&J could not 8 have manufactured Johnson's Baby Powder with 9 cornstarch at any point during the past 60 years? 10 A. My analysis wasn't aimed at looking 11 at manufacturing or looking at individual 12 incidents. 13 I've done an analysis of what J&J 14 knew and when and how they secured scientific 15 knowledge about its product, and whether or not 16 the actions it's taken -- 17 Q. Okay. 18 A. -- has contributed -- shows that 19 they have the well-being of consumers in mind. 20 Q. Okay. Move to strike the 21 nonresponsive portion of your answer. 22 Using the phraseology that you had 23 before, do you see any evidence that cornstarch is 24 not a commercially effective or viable product?</p>

<p style="text-align: right;">Page 42</p> <p>1 A. I did not study the cornstarch 2 product. So I can't answer anything on that. 3 Q. Okay. Have you ever seen any 4 suggestion that cornstarch products are associated 5 with any potentially dangerous disease? 6 A. I have not studied cornstarch, and I 7 know that it was considered and I know it wasn't a 8 perfect replacement product and I know it had 9 different properties. That's what I know. 10 Q. That wasn't -- that wasn't my 11 question, though. 12 Have you seen any evidence that 13 cornstarch powders were associated with a 14 potentially dangerous disease? 15 A. I go back to my answer. 16 I have not studied the cornstarch 17 and cornstarch manufacturing and I don't know 18 anything really about cornstarch. And I can't 19 answer your question. 20 Q. So you don't know whether or not 21 it's -- you have no -- you don't know whether 22 you've ever seen any evidence in your review of 23 thousands of documents as to whether or not 24 cornstarch was associated with a fatal disease?</p>	<p style="text-align: right;">Page 44</p> <p>1 litigation, not -- not the withdrawal of the 2 product, correct? 3 A. No. This project being this -- this 4 report. 5 Q. Right. 6 A. Doing -- doing this -- this 7 analysis. 8 Q. You were working -- you know that 9 Johnson & Johnson withdrew talc worldwide in 2022, 10 correct? 11 A. I would have to go back. I don't 12 remember the exact date. 13 Q. Okay. Well, you were working on 14 this project, the litigation project, at that 15 time, correct? 16 A. First of all, I don't think about 17 this as a litigation project, but I think about it 18 as -- as an analysis. And, again, I've been 19 working on it since 2019. 20 Q. Did Johnson & Johnson, the company 21 or any division of Johnson & Johnson, ever reach 22 out to you in the normal course of business and 23 say, "Hey, you know, you've got some expertise 24 here that's really important to our business.</p>
<p style="text-align: right;">Page 43</p> <p>1 A. I have not studied cornstarch. 2 Q. Okay. 3 A. I can't answer. 4 Q. Okay. Now, what we're talking -- 5 and you know that Johnson's Baby Powder -- you 6 referred to this in your report -- was actually 7 withdrawn in North America in 2000 as a product, 8 correct? 9 A. Correct. 10 Q. And if I read your report correctly, 11 that would have been withdrawn at the time frame 12 you were actually consulting with Mr. Ewald and 13 others in connection with this litigation. True? 14 A. I started work on this project in 15 2019. 2020 is after 2019. 16 Q. So at any time during the course of 17 time that you were actually working on the 18 litigation side, did Johnson & Johnson contact you 19 to see if they could get your advice or your 20 expertise in connection with their product 21 withdrawal? 22 A. I -- I was working for Johnson & 23 Johnson related to putting this project together. 24 Q. Would "this project" be in</p>	<p style="text-align: right;">Page 45</p> <p>1 Could you help us do some sensemaking"? 2 A. I have a full-time job, as you know, 3 and I took on this project as well. This was 4 enough for me. 5 Q. Well, I didn't ask you whether you 6 did it or not. 7 I asked you whether anybody ever 8 asked you to do it. 9 A. Nobody has asked me to do that. 10 Q. Okay. The fact that you feel 11 whether or not J&J ever in the course -- have you 12 ever heard in your review of thousands of pages of 13 documents that anybody at J&J at any time had ever 14 said, "You know something? We need to consult 15 with a behavioral and organizational expert to 16 help us make sense of the environment in which we 17 are operating our consumer business"? 18 A. I have to say, J&J has -- I'm sure 19 has plenty of people in their organization to help 20 them figure out what to do. 21 Q. I am not -- I did not ask that 22 question. They have employees. Everybody from 23 janitors to scientists. Okay? They have 24 everybody and everybody in between.</p>

<p style="text-align: right;">Page 46</p> <p>1 I'm asking you whether in your</p> <p>2 review of the -- of the documents and literature,</p> <p>3 had you ever seen them consult with and say, "We</p> <p>4 need to have an organizational, behavioral expert</p> <p>5 come and help us make sense of the external</p> <p>6 environment in which we are operating our consumer</p> <p>7 business"?</p> <p>8 A. I know what J&J asked me to do, and</p> <p>9 I've done it in this case.</p> <p>10 Q. That's not what I asked you.</p> <p>11 Have you ever seen in your -- in</p> <p>12 your review of the record whether or not -- you've</p> <p>13 seen them that they've consulted with</p> <p>14 epidemiologists, correct?</p> <p>15 A. Uh-huh.</p> <p>16 Q. Toxicologists, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Regulatory people, correct?</p> <p>19 A. Correct.</p> <p>20 Q. You've seen all kinds of specialties</p> <p>21 which were contacted.</p> <p>22 Did they ever contact your</p> <p>23 specialty, to the best of your knowledge?</p> <p>24 A. To my knowledge, I have no knowledge</p>	<p style="text-align: right;">Page 48</p> <p>1 I've never done a word search on it.</p> <p>2 BY MR. TISI:</p> <p>3 Q. Okay. Well, it appears a lot in</p> <p>4 your report. True?</p> <p>5 A. It is --</p> <p>6 MR. EWALD: Objection to form.</p> <p>7 Go ahead.</p> <p>8 THE WITNESS: I write about</p> <p>9 asbestos in there. So I'm assuming.</p> <p>10 BY MR. TISI:</p> <p>11 Q. You write about asbestos a lot in</p> <p>12 that report?</p> <p>13 A. All I can say is, I don't -- I can't</p> <p>14 say 80 or what have you. I don't know.</p> <p>15 Q. I'm not asking you for.</p> <p>16 Over 50 percent of your report deals</p> <p>17 with asbestos.</p> <p>18 Would you agree?</p> <p>19 MR. EWALD: Objection.</p> <p>20 BY MR. TISI:</p> <p>21 Q. And asbestos-related issues?</p> <p>22 MR. EWALD: Objection.</p> <p>23 BY MR. TISI:</p> <p>24 Q. Testing, mining, the characteristics</p>
<p style="text-align: right;">Page 47</p> <p>1 of that.</p> <p>2 Q. Okay. Now, let's talk about -- you</p> <p>3 alluded to this, but I want to make sure we get</p> <p>4 this on the record.</p> <p>5 I want to talk about some of the</p> <p>6 things that you are not going to testify to.</p> <p>7 Okay?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Now, I marked as Exhibit Number 1</p> <p>10 your CV, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Number 2 is your expert report,</p> <p>13 which is, the narrative is 82 pages long, correct?</p> <p>14 A. I will just look.</p> <p>15 Correct.</p> <p>16 Q. Okay. I did a word search of your</p> <p>17 document, of your narrative, and of the 82 pages,</p> <p>18 the word "asbestos" appears 300 times on 60 of the</p> <p>19 82 pages.</p> <p>20 Does that -- do you have any reason</p> <p>21 to think that I'm incorrect?</p> <p>22 MR. EWALD: Objection to form.</p> <p>23 THE WITNESS: I can't say</p> <p>24 that you're correct or incorrect because</p>	<p style="text-align: right;">Page 49</p> <p>1 of the asbestos. True?</p> <p>2 A. Asbestos is part of my report,</p> <p>3 correct.</p> <p>4 Q. Okay. And in addition to your</p> <p>5 report, there are numerous tables to your report.</p> <p>6 For example, there are tables that deal with</p> <p>7 mining, the characteristics of asbestos, testing</p> <p>8 methods, test results.</p> <p>9 You have all kinds of tables and</p> <p>10 appendices related to those issues, correct?</p> <p>11 A. Correct.</p> <p>12 Q. All right. You're not a</p> <p>13 mineralogist, are you?</p> <p>14 A. I'm not a mineralogist.</p> <p>15 Q. You're not a geologist?</p> <p>16 A. I'm not a geologist.</p> <p>17 Q. You're not an expert in mining?</p> <p>18 A. Correct.</p> <p>19 Q. You're not an expert in mining for</p> <p>20 talc?</p> <p>21 A. Correct.</p> <p>22 Q. You're not an expert in testing talc</p> <p>23 for the presence of asbestos or any unwanted</p> <p>24 constituents, correct?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. I am not a toxicologist or a</p> <p>2 microscopist.</p> <p>3 Q. That wasn't my question.</p> <p>4 You're not an expert in testing for</p> <p>5 talc?</p> <p>6 A. I am not a testing, correct.</p> <p>7 Q. Actually, you know nothing, you have</p> <p>8 known nothing. You're not an expert in PLM, XRD,</p> <p>9 or any other testing that you referred to in your</p> <p>10 report, correct?</p> <p>11 A. No. What I know of these fine</p> <p>12 details are what I've learned over five years.</p> <p>13 Q. Right.</p> <p>14 In the context of the litigation?</p> <p>15 A. In studying this project.</p> <p>16 Q. Right.</p> <p>17 A. In studying -- in studying thousands</p> <p>18 of pages of data.</p> <p>19 Q. Would you -- would you characterize</p> <p>20 yourself now as an expert in testing?</p> <p>21 A. I'm not an expert on testing, and</p> <p>22 I'm not opining in this -- in this matter.</p> <p>23 Q. Okay. Now, I've reviewed all the</p> <p>24 references in your CV.</p>	<p style="text-align: right;">Page 52</p> <p>1 A. I have not written about these</p> <p>2 things, correct.</p> <p>3 Q. You've never even probably said</p> <p>4 those words. True? Have you --</p> <p>5 A. I have said them a lot, actually.</p> <p>6 Q. Have you ever used the word</p> <p>7 "chrysotile" outside of litigation?</p> <p>8 A. I've -- first of all, I don't use it</p> <p>9 inside litigation but, no, I don't think I've</p> <p>10 talked about it.</p> <p>11 Q. Well, it's in your report?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Do you know whether or not</p> <p>14 any of the testing that J&J did was specifically</p> <p>15 designed to test for chrysotile?</p> <p>16 A. I believe that TEM is -- is -- is a</p> <p>17 sensitive method.</p> <p>18 Q. Okay. Before this case, before</p> <p>19 being involved in this project, did you know what</p> <p>20 an amphibole is?</p> <p>21 A. I do not remember whether I knew or</p> <p>22 I didn't know.</p> <p>23 Q. Do you know -- did you know whether</p> <p>24 or not you knew what chrysotile was?</p>
<p style="text-align: right;">Page 51</p> <p>1 A. Uh-huh.</p> <p>2 Q. Done a word search of that.</p> <p>3 Would it surprise you that the word</p> <p>4 "asbestos" doesn't appear in any of your published</p> <p>5 literature?</p> <p>6 A. Okay.</p> <p>7 Q. Does it?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Now, in your report, Exhibit</p> <p>10 Number 2, there's a Figure 1.</p> <p>11 Do you see that?</p> <p>12 A. Oh, maybe I should look at your</p> <p>13 exhibit.</p> <p>14 Q. It's on F-1.i.</p> <p>15 Here I can show you?</p> <p>16 A. Yeah.</p> <p>17 Q. Okay. It talks about serpentine and</p> <p>18 amphiboles and asbestiform and non-asbestiform and</p> <p>19 tremolite and chrysotile.</p> <p>20 You see all those characterizations?</p> <p>21 A. Yes.</p> <p>22 Q. You've never used those words in</p> <p>23 your professional practice outside of this</p> <p>24 litigation, have you?</p>	<p style="text-align: right;">Page 53</p> <p>1 A. I honestly do not remember whether I</p> <p>2 did or not.</p> <p>3 Q. You're not a toxicologist, ma'am.</p> <p>4 True?</p> <p>5 A. I am not a toxicologist, correct.</p> <p>6 Q. Have you ever taken a course in</p> <p>7 toxicology?</p> <p>8 A. I am not a toxicologist, correct.</p> <p>9 Q. Okay. That wasn't my question.</p> <p>10 Did you ever take a course in</p> <p>11 toxicology?</p> <p>12 A. Again, I haven't studied toxicology.</p> <p>13 Q. Have you ever -- can you answer my</p> <p>14 question?</p> <p>15 Have you ever taken -- I'm not a</p> <p>16 statistician, but I took statistics in college.</p> <p>17 A. Uh-huh.</p> <p>18 Q. My question is: Did you take --</p> <p>19 have you ever taken a course in toxicology?</p> <p>20 A. I have not taken a course in</p> <p>21 toxicology.</p> <p>22 Q. Thank you.</p> <p>23 Have you ever -- you are not an</p> <p>24 epidemiologist?</p>

<p style="text-align: right;">Page 54</p> <p>1 A. I'm not an epidemiologist. Of</p> <p>2 course, I have read the literature. In my last</p> <p>3 book, I drew a lot on epidemiology of medical</p> <p>4 mistakes.</p> <p>5 Q. Ma'am, that wasn't my question.</p> <p>6 MR. TISI: Could you please</p> <p>7 read back my question.</p> <p>8 (The reporter read the record</p> <p>9 on page 53 lines 23-24.)</p> <p>10 THE WITNESS: Again, I'm not</p> <p>11 an epidemiologist --</p> <p>12 BY MR. TISI:</p> <p>13 Q. Thank you.</p> <p>14 A. -- but I certainly have read many</p> <p>15 epidemiological studies.</p> <p>16 Q. Except not the epidemiology studies</p> <p>17 in this case?</p> <p>18 A. In this case, that was not my</p> <p>19 assignment.</p> <p>20 Q. All right. And have you ever taken</p> <p>21 a course in epidemiology?</p> <p>22 A. It's hard to remember whether or not</p> <p>23 in my nursing studies. I -- I don't recall</p> <p>24 whether I did or not.</p>	<p style="text-align: right;">Page 56</p> <p>1 I have not done --</p> <p>2 Q. That wasn't my question.</p> <p>3 A. I have not done anything related</p> <p>4 to -- to warnings.</p> <p>5 Q. Okay. So my question is: Have you</p> <p>6 ever drafted a label of any kind for a cosmetic</p> <p>7 product?</p> <p>8 A. I have not.</p> <p>9 Q. Okay. Have you ever drafted</p> <p>10 instructions for a cosmetic product?</p> <p>11 A. I have not.</p> <p>12 Q. Have you ever participated in</p> <p>13 drafting warnings or instructions for any product</p> <p>14 covered by the Food, Drug, and Cosmetic Act?</p> <p>15 A. I am not a regulatory expert and I</p> <p>16 have not done -- I have not created a warning.</p> <p>17 Q. Okay. Have you ever participated in</p> <p>18 any way, outside of this litigation, in</p> <p>19 sensemaking with respect to drafting a warning or</p> <p>20 an instruction for a product covered by the Food,</p> <p>21 Drug, and Cosmetic Act?</p> <p>22 A. I don't -- in your -- could you --</p> <p>23 could you --</p> <p>24 MR. EWALD: Yeah.</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. Let's talk a bit about cosmetics.</p> <p>2 We talked about the Food, Drug, and</p> <p>3 Cosmetic Act.</p> <p>4 You are not an expert in FDA</p> <p>5 regulations, are you?</p> <p>6 A. I'm not a regulatory expert,</p> <p>7 correct.</p> <p>8 Q. Okay. You're not an expert in FDA</p> <p>9 regulations as they pertain to Johnson's Baby</p> <p>10 Powder or Shower to Shower, are you?</p> <p>11 A. I am not -- again, I'm not a</p> <p>12 regulatory expert and I'm not opining on that in</p> <p>13 this case.</p> <p>14 Q. Do you know the standard for adding</p> <p>15 a warning to a cosmetic?</p> <p>16 A. I do not.</p> <p>17 Q. Do you know the standard for</p> <p>18 adulteration or misbranding?</p> <p>19 A. I am not opining in this case on --</p> <p>20 on any regulatory standards.</p> <p>21 Q. Okay. Have you ever drafted or</p> <p>22 participated in the drafting of a label for a</p> <p>23 cosmetic product?</p> <p>24 A. Again, I'm not a regulatory expert.</p>	<p style="text-align: right;">Page 57</p> <p>1 THE WITNESS: -- say your</p> <p>2 question again? Because there was a lot</p> <p>3 packed into it.</p> <p>4 BY MR. TISI:</p> <p>5 Q. Okay. Let me be clear.</p> <p>6 You have not participated in any way</p> <p>7 as a consultant, as a behavioral, organizational</p> <p>8 expert, in the drafting of a warning or an</p> <p>9 instruction for a cosmetic product. True?</p> <p>10 A. I think I answered that earlier that</p> <p>11 I have not created warnings for cosmetic products.</p> <p>12 Q. Have you consulted with the FDA?</p> <p>13 You've listed a bunch of things in</p> <p>14 your CV that where you've consulted.</p> <p>15 Have you consulted with the FDA?</p> <p>16 A. I do not recall consulting for the</p> <p>17 FDA.</p> <p>18 Q. Okay. So the answer would be no.</p> <p>19 True?</p> <p>20 A. True.</p> <p>21 Q. Okay. Have you consulted with any</p> <p>22 FDA regulating company, including Johnson &</p> <p>23 Johnson, as to how to organize themselves to</p> <p>24 comply with the duties and responsibilities under</p>

<p style="text-align: right;">Page 58</p> <p>1 the Federal Food, Drug, and Cosmetic Act?</p> <p>2 A. I have not consulted on --</p> <p>3 Q. Have -- I'm sorry. I didn't mean to</p> <p>4 interrupt you?</p> <p>5 A. -- on anything related to the FDA,</p> <p>6 as far as I recall.</p> <p>7 Q. Have you ever drafted a standard</p> <p>8 operating procedure, a policy and procedure for a</p> <p>9 company that was covered by the Food, Drug, and</p> <p>10 Cosmetic Act?</p> <p>11 A. I -- I really can't answer that</p> <p>12 because I don't recall. I mean, I have -- I have</p> <p>13 worked with companies to think about processes and</p> <p>14 standard operating procedures over the 40 years</p> <p>15 I've been an organization scientist. I don't</p> <p>16 recall whether any of them were covered by the</p> <p>17 FDA.</p> <p>18 Q. Okay.</p> <p>19 A. It's possible they might have been.</p> <p>20 Q. Okay. As you sit here today, do you</p> <p>21 ever remember participating in drafting or helping</p> <p>22 a company draft SOPs or policies that are related</p> <p>23 to the food -- compliance with the Food, Drug, and</p> <p>24 Cosmetic Act?</p>	<p style="text-align: right;">Page 60</p> <p>1 A. I have not created a product design.</p> <p>2 Q. You've never written on these</p> <p>3 topics, have you?</p> <p>4 A. I am not a marketing specialist or,</p> <p>5 you know, a person who studies products.</p> <p>6 Q. And you never taught about any of</p> <p>7 these issues in any of the courses you've ever</p> <p>8 given over the course of your career, as best as</p> <p>9 you can recall, correct?</p> <p>10 MR. EWALD: Objection to the</p> <p>11 form as to "these issues."</p> <p>12 THE WITNESS: Yeah, I agree.</p> <p>13 I don't know what issues you're talking</p> <p>14 about. If you're talking about, you</p> <p>15 know, have I taught products marketing?</p> <p>16 BY MR. TISI:</p> <p>17 Q. Okay.</p> <p>18 A. No, I have not.</p> <p>19 Q. Let me withdraw the question and let</p> <p>20 me rephrase the question.</p> <p>21 Have you ever given as part of any</p> <p>22 of your discussion -- your teaching</p> <p>23 responsibilities over the course of your career at</p> <p>24 Hopkins, at Michigan, or at Minnesota, taught</p>
<p style="text-align: right;">Page 59</p> <p>1 A. Again, I honestly can't say one way</p> <p>2 or another --</p> <p>3 Q. You don't remember?</p> <p>4 A. -- because I've worked on hundreds</p> <p>5 of projects with students where we were doing</p> <p>6 consultations with -- with companies. So I just</p> <p>7 don't remember, no.</p> <p>8 Q. But nothing jumps out at you today?</p> <p>9 A. Nothing jumps out at me.</p> <p>10 Q. Have you ever consulted with a</p> <p>11 company covered by the Food, Drug, and Cosmetic</p> <p>12 Act for developing a policy and procedure as to</p> <p>13 when to employ risk mitigation for a consumer</p> <p>14 product?</p> <p>15 A. I do not recall doing that at this</p> <p>16 moment.</p> <p>17 Q. Do you ever -- I assume you've never</p> <p>18 been involved in drafting a policy and procedure</p> <p>19 for assessing potential risk for a consumer</p> <p>20 product?</p> <p>21 A. I do not recall.</p> <p>22 Q. And you never worked on design of a</p> <p>23 consumer product or any product covered by the</p> <p>24 Food, Drug, and Cosmetic Act. True?</p>	<p style="text-align: right;">Page 61</p> <p>1 about compliance with the Food and Drug</p> <p>2 Administration policies related to cosmetic drugs?</p> <p>3 A. I have taught just generally</p> <p>4 speaking about the importance of thinking about</p> <p>5 regulations, but I have not taught specifically.</p> <p>6 Q. Now, you've read the report and</p> <p>7 reviewed the deposition of Dr. David Kessler.</p> <p>8 True?</p> <p>9 A. True.</p> <p>10 Q. You know he's a former FDA</p> <p>11 Commissioner, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And in fact, in your report,</p> <p>14 you cite to various FDA Commissioners as part of</p> <p>15 your sensemaking process, correct?</p> <p>16 A. I report -- I talk about the FDA in</p> <p>17 my report at various moments.</p> <p>18 Q. Well, you actually talked about</p> <p>19 things that various FDA Commissioners said in the</p> <p>20 1980s and '70s, correct?</p> <p>21 A. Correct.</p> <p>22 Q. All right. It's fair to say you're</p> <p>23 critical of Dr. David Kessler, correct? You</p> <p>24 accuse him of cherry-picking and hindsight bias,</p>

<p style="text-align: right;">Page 62</p> <p>1 correct?</p> <p>2 A. Generally speaking, I was talking</p> <p>3 about the plaintiffs. So I don't think that I</p> <p>4 mentioned him specifically.</p> <p>5 Q. Okay. If you do in your report, do</p> <p>6 you have any criticisms of him specifically?</p> <p>7 A. I'm not -- I'm talking generally.</p> <p>8 Q. Okay. Do you think you have more --</p> <p>9 I mean, on balance you've looked at his report and</p> <p>10 his qualifications and you have yours.</p> <p>11 Do you think that you or he have</p> <p>12 more experience as to what the FDA requires of a</p> <p>13 cosmetic manufacturer like J&J?</p> <p>14 MR. EWALD: Objection to form.</p> <p>15 Speculation.</p> <p>16 Go ahead.</p> <p>17 THE WITNESS: I mean, I can't</p> <p>18 make a judgment about -- obviously he,</p> <p>19 you know, has worked in government. I</p> <p>20 understand that I can't say one way or</p> <p>21 the other.</p> <p>22 BY MR. TISI:</p> <p>23 Q. He not only worked in government,</p> <p>24 ma'am. He was -- he was the Commissioner of the</p>	<p style="text-align: right;">Page 64</p> <p>1 the testimony -- the report of George Newman,</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. He's a psychologist and an expert in</p> <p>5 marketing, correct?</p> <p>6 A. I've seen his -- his CV.</p> <p>7 Q. You're not an expert in marketing,</p> <p>8 are you?</p> <p>9 A. Report.</p> <p>10 I am not an expert in marketing, and</p> <p>11 I think -- I don't think he has a degree in</p> <p>12 marketing. I know he took some classes. I don't</p> <p>13 know what his -- his --</p> <p>14 Q. You haven't even taken any classes,</p> <p>15 have you?</p> <p>16 A. -- background is.</p> <p>17 Oh, I have done other things in</p> <p>18 marketing. I've gained a perspective of that.</p> <p>19 Q. Okay. You're not a medical doctor?</p> <p>20 A. I'm not a medical doctor.</p> <p>21 Q. You're not an oncologist?</p> <p>22 A. I'm not an oncologist.</p> <p>23 Q. You're not a gynecologist?</p> <p>24 A. I'm not a gynecologist.</p>
<p style="text-align: right;">Page 63</p> <p>1 Food and Drug Administration.</p> <p>2 Do you think you have more</p> <p>3 experience than he does about the rules and</p> <p>4 regulations that govern the development of</p> <p>5 cosmetic products --</p> <p>6 MR. EWALD: Chris.</p> <p>7 BY MR. TISI:</p> <p>8 Q. -- than you?</p> <p>9 MR. EWALD: You've cut her off</p> <p>10 again.</p> <p>11 Can you continue to answer,</p> <p>12 Dr. Sutcliffe?</p> <p>13 THE WITNESS: Yeah. What I</p> <p>14 was going to say, you know, obviously he</p> <p>15 has more experience. I have not worked</p> <p>16 for the FDA.</p> <p>17 BY MR. TISI:</p> <p>18 Q. Okay.</p> <p>19 A. But I can't make a judgment about</p> <p>20 his --</p> <p>21 Q. Okay.</p> <p>22 A. -- performance or experience or</p> <p>23 anything because I have not examined that.</p> <p>24 Q. Okay. You've read the deposition --</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Now, since being named or since</p> <p>2 starting your work in 2019, I think you said on</p> <p>3 this project, this litigation project?</p> <p>4 A. That's correct.</p> <p>5 Q. Have you said -- have you -- you</p> <p>6 have contacts with various industries and</p> <p>7 consulted with various industries. True?</p> <p>8 A. Yes, I have.</p> <p>9 Q. Have you said to -- have you</p> <p>10 contacted any pharmaceutical consumer product</p> <p>11 company and say, "Hey, look, you know, I've done</p> <p>12 some work now on looking at a company dealing with</p> <p>13 regulated by the Food, Drug, and Cosmetic Act. I</p> <p>14 can help you in your -- in your normal course of</p> <p>15 business."</p> <p>16 Have you done that at all?</p> <p>17 A. No.</p> <p>18 Q. All right. Let's look at your CV,</p> <p>19 Exhibit 1.</p> <p>20 And you mention that you are -- you</p> <p>21 have your PhD in Organization Theory and Behavior,</p> <p>22 correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. And you've been a professor</p>

<p style="text-align: right;">Page 66</p> <p>1 at various schools at Johns Hopkins since 2014?</p> <p>2 A. Correct.</p> <p>3 Q. And you've worked as a professor or</p> <p>4 assistant professor at University of Michigan,</p> <p>5 correct?</p> <p>6 A. I was a professor. I was a chair</p> <p>7 professor at Michigan, correct.</p> <p>8 Q. Have you ever looked at what the</p> <p>9 Johns Hopkins and University of Michigan said</p> <p>10 about talc and ovarian cancer at the times in the</p> <p>11 1990s and early 2000s?</p> <p>12 A. I have not investigated Michigan or</p> <p>13 Johns Hopkins.</p> <p>14 Q. Now, on page 28 of your -- A-28 of</p> <p>15 your expert -- of your CV, Exhibit Number 1?</p> <p>16 A. Uh-huh.</p> <p>17 Q. I notice that you've taught</p> <p>18 undergraduate and graduate students?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. And I think I asked you this</p> <p>21 before, but I want to be really specific.</p> <p>22 In any of the courses listed here,</p> <p>23 did you ever teach a course or as part of a course</p> <p>24 how to manage a company that is covered by the</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Yes.</p> <p>2 A. I do not recall talking about</p> <p>3 asbestos.</p> <p>4 Q. Do you ever recall even mentioning</p> <p>5 the Food, Drug, and Cosmetic Act?</p> <p>6 A. I do not recall. I don't know one</p> <p>7 way or another.</p> <p>8 Q. Okay. Do you ever recall it?</p> <p>9 A. I beg your pardon?</p> <p>10 Q. Do you ever recall that being the</p> <p>11 subject of your professional research?</p> <p>12 A. It's -- I -- no.</p> <p>13 Q. Do you ever recall ever talking</p> <p>14 about talc in any of your research?</p> <p>15 A. I do not recall.</p> <p>16 Q. Now, in Exhibit Number 1 on page</p> <p>17 A-33 of your CV, you talk about various</p> <p>18 consulting, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Is this litigation consulting</p> <p>21 that you've talked that's listed here --</p> <p>22 A. No.</p> <p>23 Q. I'm sorry. You need to let me</p> <p>24 finish.</p>
<p style="text-align: right;">Page 67</p> <p>1 Food, Drug, and Cosmetic Act?</p> <p>2 A. I believe that in many of the</p> <p>3 courses, the multidisciplinary action projects in</p> <p>4 particular at Michigan, we oftentimes worked</p> <p>5 with -- with companies that were covered. I mean,</p> <p>6 I can't recall anything off the top of my head --</p> <p>7 Q. Okay.</p> <p>8 A. -- but, yes.</p> <p>9 Q. That wasn't my question.</p> <p>10 My question is: As part of your</p> <p>11 actual coursework when you're actually teaching,</p> <p>12 did you have any class or module in class that</p> <p>13 talks about the unique responsibilities of a</p> <p>14 company that is covered by the Food, Drug, and</p> <p>15 Cosmetic Act?</p> <p>16 A. I have not taught the Food and Drug</p> <p>17 Act, correct.</p> <p>18 Q. Okay. Now I've looked at your</p> <p>19 literature.</p> <p>20 I asked you whether or not you ever</p> <p>21 remember in any of the literature discussing</p> <p>22 asbestos, and you said the answer was no, correct?</p> <p>23 A. I in my -- you're talking about my</p> <p>24 published work?</p>	<p style="text-align: right;">Page 69</p> <p>1 A. Okay. Sorry.</p> <p>2 Q. Is this litigation consulting or in</p> <p>3 the normal course of your academic work</p> <p>4 consulting?</p> <p>5 A. No, this is -- there's just one</p> <p>6 thing that relates to litigation and that's the</p> <p>7 consulting with Analysis Group.</p> <p>8 Q. Okay. The Analysis Group is --</p> <p>9 okay. We'll talk about the Analysis Group in a</p> <p>10 moment.</p> <p>11 But all the companies -- Marathon</p> <p>12 Oil, Goldman Sachs, Georgia-Pacific, General</p> <p>13 Electric, Hewlett-Packard, etc., Xerox -- these</p> <p>14 are all companies that you -- that you have</p> <p>15 consulted with, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Okay.</p> <p>18 A. And, of course, this doesn't</p> <p>19 represent the projects that I have done with</p> <p>20 students, which I just mentioned earlier.</p> <p>21 Q. Okay. My question to you is this:</p> <p>22 In any of these examples, did any of these</p> <p>23 companies produce consumer products or cosmetics</p> <p>24 or anything covered by the Food, Drug, and</p>

<p style="text-align: right;">Page 70</p> <p>1 Cosmetic Act?</p> <p>2 A. I mean, here I would say where</p> <p>3 I've -- where I've seen companies that are -- are</p> <p>4 -- that have products would be in my teaching</p> <p>5 related to the Multidisciplinary Action Project.</p> <p>6 Q. Okay. That wasn't my question.</p> <p>7 A. So. Okay.</p> <p>8 Q. Okay.</p> <p>9 A. I have -- myself have not consulted.</p> <p>10 I mean, I don't know. Maybe some of these</p> <p>11 companies do have products. For example, General</p> <p>12 Electric have -- they have GE Healthcare. I do</p> <p>13 not recall.</p> <p>14 Q. But you didn't -- you have -- in</p> <p>15 your consulting work for these companies, they</p> <p>16 were not in the context of a consumer product</p> <p>17 covered by the Food, Drug, and Cosmetic Act.</p> <p>18 True?</p> <p>19 A. As far as I recall, no. Correct.</p> <p>20 Q. Okay. Now, you have been an expert</p> <p>21 in litigation. True?</p> <p>22 A. I have been an expert in litigation</p> <p>23 in the past.</p> <p>24 Q. For example, you have been an expert</p>	<p style="text-align: right;">Page 72</p> <p>1 culture in the time leading up to the Deepwater</p> <p>2 Horizon.</p> <p>3 Q. And your conclusion was they did</p> <p>4 everything right?</p> <p>5 A. I had, you know, broad conclusions,</p> <p>6 and I don't believe -- I think you're</p> <p>7 mischaracterizing what I -- what I said.</p> <p>8 Q. You said they had good safety</p> <p>9 culture. True?</p> <p>10 A. I am saying that BP was enacting,</p> <p>11 enabling, and elaborating a safety culture and it</p> <p>12 was -- and they -- and they were taking actions to</p> <p>13 do that.</p> <p>14 Q. And you were designated by BP,</p> <p>15 correct?</p> <p>16 A. I -- I beg your pardon?</p> <p>17 MR. EWALD: Objection to form.</p> <p>18 BY MR. TISI:</p> <p>19 Q. You were designated as an expert?</p> <p>20 You worked for BP in that litigation?</p> <p>21 A. Yes, I worked for BP.</p> <p>22 Q. And your testimony was struck in</p> <p>23 that case, wasn't it?</p> <p>24 A. No, that -- my testimony in the --</p>
<p style="text-align: right;">Page 71</p> <p>1 for British Petroleum, or BP, in the Deepwater</p> <p>2 Horizon case. True?</p> <p>3 A. Correct.</p> <p>4 Q. In that case, BP released millions</p> <p>5 of gallons of oil into the Gulf of Mexico. True?</p> <p>6 A. Gallons of oil were -- were -- yes.</p> <p>7 Q. I'm sorry?</p> <p>8 A. Yes, that's correct.</p> <p>9 Q. Okay. And you provided an expert</p> <p>10 report that in effect said BP had a great safety</p> <p>11 culture and you testified, as you do here, that BP</p> <p>12 was committed to safety, correct?</p> <p>13 MR. EWALD: Objection to form.</p> <p>14 THE WITNESS: Again, I</p> <p>15 applied my organizational expertise to</p> <p>16 analyze BP's safety culture in the time</p> <p>17 leading up to the Deepwater Horizon.</p> <p>18 BY MR. TISI:</p> <p>19 Q. And you felt that BP had a great or</p> <p>20 very good safety culture when it -- leading up to</p> <p>21 the release of millions of gallons of -- of oil</p> <p>22 into the Gulf of Mexico. True?</p> <p>23 A. Again, my -- my role was to apply my</p> <p>24 expertise in doing an analysis of BP's safety</p>	<p style="text-align: right;">Page 73</p> <p>1 in the -- there were two phases. I think it was</p> <p>2 the -- I can't remember what the names of them</p> <p>3 are.</p> <p>4 My testimony was struck because</p> <p>5 another expert, his testimony was struck and so</p> <p>6 mine was not needed.</p> <p>7 Q. Okay. Why was his testimony struck?</p> <p>8 A. I have no idea.</p> <p>9 Q. Okay. So your testimony was not</p> <p>10 needed?</p> <p>11 A. My testimony was not needed.</p> <p>12 Q. Have you ever been struck in any</p> <p>13 other case involving -- in litigation as either</p> <p>14 being not qualified, not applying appropriate</p> <p>15 methodology, or your testimony doesn't fit the</p> <p>16 case?</p> <p>17 A. Are you asking about a Daubert</p> <p>18 motion?</p> <p>19 Q. Not necessarily. I'm asking struck</p> <p>20 for any reason.</p> <p>21 A. As far as I know, my testimony has</p> <p>22 never been struck.</p> <p>23 Q. Other than BP?</p> <p>24 A. Aside from when the expert was</p>

<p style="text-align: right;">Page 74</p> <p>1 eliminated and my testimony wasn't needed.</p> <p>2 Q. Okay. All right. Do you have a</p> <p>3 copy of that order?</p> <p>4 A. Do I? No.</p> <p>5 MR. TISI: All right. Let me</p> <p>6 go to Exhibit Number 3, which is the</p> <p>7 notice of deposition.</p> <p>8 (Document marked for</p> <p>9 identification as Sutcliffe Exhibit 3.)</p> <p>10 BY MR. TISI:</p> <p>11 Q. Now, there's a lot to cover here,</p> <p>12 but I'm going to kind of cut it down to the -- to</p> <p>13 the minimum here.</p> <p>14 Have you seen this document before?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Have you reviewed documents?</p> <p>17 Have you reviewed your files for complying with</p> <p>18 this subpoena, this notice of deposition?</p> <p>19 A. I believe that I have.</p> <p>20 Q. Okay. First of all, you charge</p> <p>21 \$1100 an hour to do your work. True?</p> <p>22 A. Correct.</p> <p>23 Q. All right. And how many hours have</p> <p>24 you devoted to this project over the years?</p>	<p style="text-align: right;">Page 76</p> <p>1 time.</p> <p>2 Q. How much would you say that you've</p> <p>3 -- how much would you say that you have personally</p> <p>4 made in dealing with this project?</p> <p>5 A. I -- I would -- I can't really</p> <p>6 answer that because I don't know precisely. I</p> <p>7 didn't -- I didn't count it up.</p> <p>8 Q. Between 4 and \$500,000 perhaps?</p> <p>9 A. I would say between 400 and 500,000.</p> <p>10 Q. Okay. Now, in addition, you have</p> <p>11 worked for the Analysis Group. True?</p> <p>12 A. I am working for -- no, I don't</p> <p>13 think that's correct.</p> <p>14 Q. Okay. What is the Analysis Group?</p> <p>15 A. The Analysis Group is -- I think</p> <p>16 about it as an economic and research consulting</p> <p>17 group.</p> <p>18 Q. Do you have any stake or ownership</p> <p>19 of the business?</p> <p>20 A. I don't.</p> <p>21 Q. Okay. Who owns the business?</p> <p>22 A. I -- I don't know all the ins and</p> <p>23 outs of the business.</p> <p>24 Q. I didn't ask that.</p>
<p style="text-align: right;">Page 75</p> <p>1 A. I --</p> <p>2 Q. And when I -- I want to be clear.</p> <p>3 Let me be -- let me be a hundred percent clear.</p> <p>4 Okay?</p> <p>5 I'm not talking about your work for</p> <p>6 Carl and Balderrama or the MDL. I'm talking you</p> <p>7 about you worked for Johnson & Johnson completely</p> <p>8 from the first day that you started working for</p> <p>9 them, whether it's a mesothelioma case or an</p> <p>10 ovarian cancer case or any other case.</p> <p>11 I want to know how much time you</p> <p>12 have spent on the talc project.</p> <p>13 A. I can't give you a precise number,</p> <p>14 but I can say that from the start of the project</p> <p>15 in 2019 to the end of this week on Friday, I think</p> <p>16 I will have billed between 400 and 500 hours.</p> <p>17 Q. Okay. At \$1100 an hour, how much</p> <p>18 does that --</p> <p>19 MR. EWALD: Hold on.</p> <p>20 THE WITNESS: Yeah. My -- I</p> <p>21 started off at \$900 an hour.</p> <p>22 BY MR. TISI:</p> <p>23 Q. Okay.</p> <p>24 A. So it was not \$1100 for the whole</p>	<p style="text-align: right;">Page 77</p> <p>1 Do you know who owns it?</p> <p>2 A. I honestly don't know.</p> <p>3 Q. Okay. In addition to yourself, did</p> <p>4 the Analysis Group bill for their time and efforts</p> <p>5 in this?</p> <p>6 A. Yes. I described in my document</p> <p>7 that I have a research team from Analysis Group.</p> <p>8 MR. TISI: Okay. Can I have</p> <p>9 Exhibit 48?</p> <p>10 These are a little bit out of</p> <p>11 order because I got these yesterday and</p> <p>12 so these may be out of order. So I</p> <p>13 apologize for that.</p> <p>14 Here's Exhibit --</p> <p>15 MR. EWALD: So the record is</p> <p>16 clear, we transmitted them on Friday. I</p> <p>17 know that it was a holiday weekend, but I</p> <p>18 just want the record to be clear --</p> <p>19 MR. TISI: That's fine.</p> <p>20 MR. EWALD: -- when they got</p> <p>21 to plaintiffs.</p> <p>22 MR. TISI: They got to me on</p> <p>23 Saturday actually, but that's okay. I'm</p> <p>24 not --</p>

<p style="text-align: right;">Page 78</p> <p>1 MR. EWALD: I'm not saying --</p> <p>2 (laugh).</p> <p>3 (Document marked for</p> <p>4 identification as Sutcliffe Exhibit 48.)</p> <p>5 BY MR. TISI:</p> <p>6 Q. Attached are three bills from the</p> <p>7 Analysis Group.</p> <p>8 A. Okay. Uh-huh.</p> <p>9 Q. Okay. Now, these -- first of all,</p> <p>10 the Analysis Group is based out of Boston,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And how did you first -- is this the</p> <p>14 first time you've worked with the Analysis Group,</p> <p>15 or have you done that over the years?</p> <p>16 A. No, I have done that over the years.</p> <p>17 Q. Now, you said you've worked for</p> <p>18 various companies doing litigation support. True?</p> <p>19 A. I don't think that I said that.</p> <p>20 Q. Okay. You have worked -- well,</p> <p>21 you've been designated an expert.</p> <p>22 We know the Deepwater Horizon case,</p> <p>23 and I think you've designated two other cases in</p> <p>24 your report where you've given testimony in the</p>	<p style="text-align: right;">Page 80</p> <p>1 And what about, you know, over the</p> <p>2 years, can you give me a sense of how much of your</p> <p>3 income, even as a percentage-wise, has been</p> <p>4 working with companies in litigation?</p> <p>5 A. I honestly can't because, you know,</p> <p>6 there were years when I wasn't working. So I</p> <p>7 think it would have to be specific.</p> <p>8 Q. What about BP? How much -- how much</p> <p>9 money did you make from BP to defend them against</p> <p>10 the oil spill in the Gulf of Mexico?</p> <p>11 A. I do not recall.</p> <p>12 Q. Over half a million dollars?</p> <p>13 A. No.</p> <p>14 Q. Okay.</p> <p>15 A. I -- no.</p> <p>16 Q. Over a hundred thousand dollars?</p> <p>17 A. I can't recall. I'm sorry, I have</p> <p>18 not looked at that.</p> <p>19 Q. Would it be fair to say since 2011</p> <p>20 you have made millions of dollars testifying for</p> <p>21 companies?</p> <p>22 A. No, absolutely not.</p> <p>23 Q. Over a million dollars?</p> <p>24 A. No.</p>
<p style="text-align: right;">Page 79</p> <p>1 past four years, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Was that with the Analysis</p> <p>4 Group as well?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Let me ask you this: How</p> <p>7 long have you been providing expert testimony on</p> <p>8 behalf of companies?</p> <p>9 A. Since 2011.</p> <p>10 Q. And over -- since 2011, can you give</p> <p>11 me a sense of how much, generally speaking, you</p> <p>12 have made consulting for expert -- consulting for</p> <p>13 companies in litigation?</p> <p>14 A. No, I can't.</p> <p>15 MR. EWALD: Object to form.</p> <p>16 THE WITNESS: I can't answer</p> <p>17 that question because I have not looked</p> <p>18 that up.</p> <p>19 BY MR. TISI:</p> <p>20 Q. Well, in this case, it's about a</p> <p>21 half million dollars, correct?</p> <p>22 A. In this case, as I said, it's</p> <p>23 between 400 and 500.</p> <p>24 Q. Right.</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Really? Okay.</p> <p>2 All right. With Analysis Group, did</p> <p>3 you get billed through the Analysis Group over --</p> <p>4 since 2011?</p> <p>5 A. I beg your pardon?</p> <p>6 Q. Did your -- did your billing go</p> <p>7 through the Analysis Group?</p> <p>8 A. I send my bills to the Analysis</p> <p>9 Group and they send them to the company, yes.</p> <p>10 Q. Okay. So the Analysis Group would</p> <p>11 have records of the amount of money that you have</p> <p>12 billed for the various projects which you worked</p> <p>13 since 2011. True?</p> <p>14 A. I don't know what they keep. I -- I</p> <p>15 can't answer that question.</p> <p>16 Q. Okay. All right. Now, do you know</p> <p>17 the qualifications of the people? Here you</p> <p>18 list -- on Exhibit Number 48, you list various</p> <p>19 management principals, management --</p> <p>20 MR. EWALD: I'm sorry, Chris.</p> <p>21 What page are you on that?</p> <p>22 MR. TISI: Second page.</p> <p>23 MR. EWALD: Second page.</p> <p>24 Right there.</p>

<p style="text-align: right;">Page 82</p> <p>1 THE WITNESS: Right there.</p> <p>2 Yeah.</p> <p>3 BY MR. TISI:</p> <p>4 Q. Now, is this -- first of all, are</p> <p>5 these \$276,000 in addition to the 4 to \$500,000</p> <p>6 that you have billed?</p> <p>7 A. I would have to count up everything,</p> <p>8 but this is what analysis -- this is the -- this</p> <p>9 is my team.</p> <p>10 Q. Right.</p> <p>11 A. And this is a bill for their work.</p> <p>12 Q. Right.</p> <p>13 So, but what I'm saying is you</p> <p>14 billed and they billed?</p> <p>15 A. Correct.</p> <p>16 Q. Right.</p> <p>17 So you have 4 to \$500,000 and now</p> <p>18 you have \$276,000 for the -- for the Analysis</p> <p>19 Group, correct?</p> <p>20 A. That's sounds correct.</p> <p>21 Q. All right.</p> <p>22 A. I mean, just putting those numbers</p> <p>23 together.</p> <p>24 Q. Right.</p>	<p style="text-align: right;">Page 84</p> <p>1 A. No.</p> <p>2 Q. Do you know that?</p> <p>3 A. I don't.</p> <p>4 Q. Because on page 1, it says:</p> <p>5 "The professional services rendered</p> <p>6 in connection with the above referenced case."</p> <p>7 Okay?</p> <p>8 A. Yeah.</p> <p>9 Q. You know this case involves more</p> <p>10 than just Brandi Carl and Ms. Balderrama, correct?</p> <p>11 A. I -- I am -- I wrote this report for</p> <p>12 this particular case.</p> <p>13 Q. Well, we're being served today, as</p> <p>14 counsel has represented, the identical report in</p> <p>15 what's called the multidistrict litigation.</p> <p>16 Are you aware of that?</p> <p>17 A. I -- I honestly don't recall.</p> <p>18 Q. Have you signed another report in</p> <p>19 connection with this case?</p> <p>20 A. I do not recall what reports are</p> <p>21 that I'm -- that I'm writing reports for. So.</p> <p>22 MR. TISI: Counsel, do you</p> <p>23 want to make a representation as to</p> <p>24 whether she's going to be designated?</p>
<p style="text-align: right;">Page 83</p> <p>1 So we're now at about \$750,000,</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. All right.</p> <p>5 A. It's a very time-intensive,</p> <p>6 resource-intensive process.</p> <p>7 Q. All right. And this is listed as</p> <p>8 for the Balderrama and -- Balderrama and Brandi</p> <p>9 Carl case, correct?</p> <p>10 A. Correct.</p> <p>11 Q. All right. Were there bills in</p> <p>12 addition to that?</p> <p>13 MR. EWALD: Objection to the</p> <p>14 form.</p> <p>15 THE WITNESS: I don't know</p> <p>16 what Analysis Group bills. I just know</p> <p>17 what I bill to --</p> <p>18 BY MR. TISI:</p> <p>19 Q. Well, do you know --</p> <p>20 A. -- Analysis Group.</p> <p>21 Q. Do you know what they billed for the</p> <p>22 project in which you were working on to develop</p> <p>23 Exhibit Number 2, your expert report? Were they</p> <p>24 actually billing in addition to the \$276,000?</p>	<p style="text-align: right;">Page 85</p> <p>1 MR. EWALD: She is designated</p> <p>2 in the MDL. Her report will be served</p> <p>3 later today for her, and the report is in</p> <p>4 all material respects identical to the</p> <p>5 Carl and Balderrama report.</p> <p>6 MR. TISI: Okay.</p> <p>7 MR. EWALD: I can also</p> <p>8 represent to you that there are not</p> <p>9 separate bills for the MDL.</p> <p>10 MR. TISI: That's what I</p> <p>11 wanted to know.</p> <p>12 MR. EWALD: Yes. Yes.</p> <p>13 MR. TISI: Okay.</p> <p>14 THE WITNESS: Okay. Sorry.</p> <p>15 I --</p> <p>16 MR. EWALD: You're not a</p> <p>17 lawyer. (Laugh).</p> <p>18 BY MR. TISI:</p> <p>19 Q. Now, in addition --</p> <p>20 MR. EWALD: And just we're</p> <p>21 going on an hour. I'm not saying stop</p> <p>22 right now, but at a good stopping point,</p> <p>23 can we take a break.</p> <p>24 MR. TISI: I will definitely</p>

<p style="text-align: right;">Page 86</p> <p>1 do that. Just let me finish up the</p> <p>2 notice of deposition --</p> <p>3 MR. EWALD: Go ahead. Of</p> <p>4 course.</p> <p>5 MR. TISI: -- and we'll move</p> <p>6 on.</p> <p>7 You provided -- I'm going to</p> <p>8 show you what's Exhibit Number 49,</p> <p>9 please.</p> <p>10 (Document marked for</p> <p>11 identification as Sutcliffe Exhibit 49.)</p> <p>12 BY MR. TISI:</p> <p>13 Q. And these are notes from your review</p> <p>14 of Dr. Nicholson and Dr. Hopkins.</p> <p>15 A. These are notes from Dr. Nicholson,</p> <p>16 not Dr. Hopkins.</p> <p>17 Q. If you look at the back?</p> <p>18 A. Oh, sorry. I didn't see it.</p> <p>19 Q. Wait a second.</p> <p>20 A. Oh, okay. I see it.</p> <p>21 Q. Correct?</p> <p>22 A. Yes.</p> <p>23 Q. And those were done at your</p> <p>24 direction?</p>	<p style="text-align: right;">Page 88</p> <p>1 people, a cast of characters in this case.</p> <p>2 There's Lorena Telofski. There's -- there's</p> <p>3 Catherine Wille. There's all kinds of people, and</p> <p>4 we'll ask you about those.</p> <p>5 Can you tell me how you chose these</p> <p>6 two as opposed to anybody else who you've seen in</p> <p>7 the records?</p> <p>8 A. I don't recall why -- why these two.</p> <p>9 These two were the people that I interviewed.</p> <p>10 Q. Well, how did -- in terms of having</p> <p>11 a methodology -- first of all, you spoke to these</p> <p>12 people after litigation had started, correct?</p> <p>13 A. I spoke to these people, I think, in</p> <p>14 2020. I don't remember -- oh, this was 2021. I</p> <p>15 think I talked to Dr. Hopkins in 2020.</p> <p>16 Q. All right. And, you know, one of</p> <p>17 the things you talked about -- and we'll talk</p> <p>18 about this in a moment -- talking about things</p> <p>19 like retrospective bias or I forget what you</p> <p>20 called it.</p> <p>21 A. Hindsight bias?</p> <p>22 Q. Hindsight bias.</p> <p>23 Do you think any of these witnesses</p> <p>24 who were involved as litigation witnesses might</p>
<p style="text-align: right;">Page 87</p> <p>1 A. The interviews?</p> <p>2 Q. Yes.</p> <p>3 A. Were conducted with my direction,</p> <p>4 yes.</p> <p>5 Q. How did you choose those people to</p> <p>6 interview?</p> <p>7 A. I chose those two -- well, first of</p> <p>8 all, you know, I asked about people who might have</p> <p>9 been in the company at the time of particularly</p> <p>10 the disruptive ambiguity happening in the 1970s,</p> <p>11 and there were no people really around other than</p> <p>12 Dr. Hopkins.</p> <p>13 And I thought it would be important</p> <p>14 to -- to interview Dr. Nicholson because she was</p> <p>15 thinking about women's health and she was</p> <p>16 available.</p> <p>17 Q. How did you give -- how did you get</p> <p>18 both of those names? Did you get it from counsel?</p> <p>19 A. How did I get their names?</p> <p>20 Q. Uh-huh.</p> <p>21 A. Well, I mean, I've been reviewing</p> <p>22 the literature and the evidence and -- yeah, I</p> <p>23 think --</p> <p>24 Q. Well, there are plenty of other</p>	<p style="text-align: right;">Page 89</p> <p>1 have some hindsight bias when they were</p> <p>2 interviewed by a litigation expert in connection</p> <p>3 with a litigation report?</p> <p>4 A. I was looking at multiple avenues of</p> <p>5 evidence. You know, triangulating is what we call</p> <p>6 it. I interviewed these two people to see what</p> <p>7 they had to say.</p> <p>8 Q. Was there anybody there who would</p> <p>9 challenge them on some of the assertions that they</p> <p>10 made, for example, about the Credo?</p> <p>11 A. I do not recall. I do not recall</p> <p>12 who was there, actually.</p> <p>13 Q. You just took their word for it?</p> <p>14 When they said, "We complied with the Credo," you</p> <p>15 took their word for it, right?</p> <p>16 MR. EWALD: Objection to form.</p> <p>17 Go ahead.</p> <p>18 THE WITNESS: This was one</p> <p>19 source of evidence. The evidence that I</p> <p>20 relied on primarily was the primary</p> <p>21 evidence that I --</p> <p>22 BY MR. TISI:</p> <p>23 Q. Okay.</p> <p>24 A. -- I document throughout my report.</p>

<p style="text-align: right;">Page 90</p> <p>1 This was one other source of evidence that I used</p> <p>2 and put it into context.</p> <p>3 Q. Okay. Let me just look through some</p> <p>4 of the things here.</p> <p>5 Did you have communications and</p> <p>6 e-mails with the Analysis Group over time?</p> <p>7 A. We -- we have occasional e-mails</p> <p>8 but, generally speaking, we don't do a lot of</p> <p>9 stuff by e-mail.</p> <p>10 Q. Okay. Do you have e-mails relating</p> <p>11 to -- to your communications with the Analysis</p> <p>12 Group?</p> <p>13 A. Again, you know, occasionally we do</p> <p>14 logistics over -- over e-mail, but we don't</p> <p>15 communicate through e-mail.</p> <p>16 Q. I asked whether you have e-mails.</p> <p>17 A. I don't. Probably not, no.</p> <p>18 Q. Okay. If you do, we'd like them and</p> <p>19 we make a request.</p> <p>20 A. I don't -- I don't have it.</p> <p>21 MR. EWALD: Take that under --</p> <p>22 I'll just note, we did make objections in</p> <p>23 our response, and subject to those</p> <p>24 objections, we will need to confer.</p>	<p style="text-align: right;">Page 92</p> <p>1 written work. I'm asking -- I'm not asking you</p> <p>2 the actual words on the page.</p> <p>3 I'm asking you: When did you</p> <p>4 actually develop the opinions that were</p> <p>5 encapsulated in this report?</p> <p>6 A. Between 2019 and 2021 and then got</p> <p>7 reengaged in last year and in the fall, and then</p> <p>8 did this report this year.</p> <p>9 Q. When -- when was the bulk -- you</p> <p>10 talk about in your Methodology section you got, I</p> <p>11 think, 600 documents initially and --</p> <p>12 A. Uh-huh.</p> <p>13 Q. -- then you got 500,000 documents</p> <p>14 later?</p> <p>15 A. Right.</p> <p>16 Q. When in the continuum of this</p> <p>17 five-year period did you get the bulk of the</p> <p>18 documents to do your complete methodologic review?</p> <p>19 A. 2019, 2020. Then in 2021, I got the</p> <p>20 additional production documents from the LAOSD</p> <p>21 and, you know, continued to -- to do work then.</p> <p>22 And as I said, I did work last fall and did work</p> <p>23 this spring.</p> <p>24 Q. Well, the LAOSD is a -- was a</p>
<p style="text-align: right;">Page 91</p> <p>1 BY MR. TISI:</p> <p>2 Q. Okay. Did you do any -- have you</p> <p>3 done any PowerPoint presentations or anything</p> <p>4 related to cosmetics outside of this litigation,</p> <p>5 to the best of your knowledge?</p> <p>6 A. No.</p> <p>7 Q. When did you -- when did you</p> <p>8 complete your report?</p> <p>9 I know your report in this case was</p> <p>10 signed on April 12th of 2024.</p> <p>11 When was this report actually</p> <p>12 completed?</p> <p>13 A. April 12, 2024.</p> <p>14 Q. So you continued to review things in</p> <p>15 this case up until April 12th?</p> <p>16 A. I was reviewing things up until</p> <p>17 April 12th.</p> <p>18 Q. When would you say the bulk of your</p> <p>19 review was? You were contacted in 2019.</p> <p>20 When was your -- was the work steady</p> <p>21 over time? Was there a particular --</p> <p>22 A. For this report?</p> <p>23 Q. For this report. For the opinions</p> <p>24 in this report. I mean, I'm not asking you the</p>	<p style="text-align: right;">Page 93</p> <p>1 mesothelioma docket, wasn't it?</p> <p>2 A. It was -- I believe it was a meso --</p> <p>3 meso case, correct.</p> <p>4 Q. Right.</p> <p>5 So most of the work and most of the</p> <p>6 documents, this is an ovarian cancer case.</p> <p>7 You know that, right?</p> <p>8 A. I know that, and the original</p> <p>9 documents that I reviewed covered both things.</p> <p>10 MR. TISI: Okay. All right.</p> <p>11 This is probably a pretty good time to</p> <p>12 kind of stop.</p> <p>13 MR. EWALD: Great.</p> <p>14 MR. TISI: We can take a quick</p> <p>15 break.</p> <p>16 THE COURT REPORTER: Off the</p> <p>17 record.</p> <p>18 (Recess: 10:18 a.m. -</p> <p>19 10:27 a.m.)</p> <p>20 MR. TISI: Back on the record.</p> <p>21 BY MR. TISI:</p> <p>22 Q. So just a couple other questions</p> <p>23 about the billing.</p> <p>24 There is no separate billing -- and</p>

<p style="text-align: right;">Page 94</p> <p>1 maybe I can ask this to counsel.</p> <p>2 MR. TISI: There's no separate</p> <p>3 billing for the MDL report, correct?</p> <p>4 MR. EWALD: Right.</p> <p>5 BY MR. TISI:</p> <p>6 Q. Okay. And do you have any ownership</p> <p>7 interest in the Analysis Group?</p> <p>8 A. No.</p> <p>9 Q. Do you know whether the Analysis</p> <p>10 Group has done work for J&J --</p> <p>11 A. I --</p> <p>12 Q. -- outside of litigation.</p> <p>13 A. I'm not aware of anything.</p> <p>14 Q. Now, when you submit bills to the</p> <p>15 Analysis Group, do you typically outline what it</p> <p>16 is you're doing, or do you just say I've done 50</p> <p>17 hours and I've charged a thousand dollars an hour</p> <p>18 and here's my bill? Do you have to account for</p> <p>19 what you're doing and when you're doing it?</p> <p>20 A. Yeah, I generally account for that I</p> <p>21 met with my team or that I reviewed materials or</p> <p>22 that I met with counsel, etc.</p> <p>23 Q. Doesn't say what you've done, right?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 96</p> <p>1 A. This is what they send.</p> <p>2 Q. And they pay bills like that?</p> <p>3 A. I have no idea about how Analysis</p> <p>4 does their bills.</p> <p>5 Q. I assume over the course of time</p> <p>6 because this is only \$11,000, you have maybe</p> <p>7 between 4 and \$500,000 that numerous letters like</p> <p>8 this have gone back and forth over to Analysis</p> <p>9 Group over the past five years, correct?</p> <p>10 A. I have not seen -- I have not seen</p> <p>11 what Analysis -- this is, like, the first time I'm</p> <p>12 seeing this.</p> <p>13 Q. Well, how do you -- how do you</p> <p>14 report your hours to Analysis Group?</p> <p>15 A. I send them an invoice.</p> <p>16 Q. Okay. Do you have a copy of your</p> <p>17 invoices?</p> <p>18 A. Not -- no, I don't.</p> <p>19 Q. You know that we asked for that,</p> <p>20 right?</p> <p>21 A. Well, I -- I --</p> <p>22 Q. We asked for your invoices, not</p> <p>23 Analysis Group's. Your invoices.</p> <p>24 A. I send Analysis Group my invoices.</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. None of those are reflected in</p> <p>2 Exhibit Number 48, other than a bill for -- on</p> <p>3 April 19th for \$1100 -- \$11,000, correct?</p> <p>4 A. I've never seen that. Okay.</p> <p>5 Q. The second one is April 19th bill</p> <p>6 for \$11,000?</p> <p>7 A. I'm sorry. I'm not sure where</p> <p>8 you're referring.</p> <p>9 Q. The second one. It's dated April</p> <p>10 19th.</p> <p>11 A. Oh, okay.</p> <p>12 Q. It's \$11,000, and these are the</p> <p>13 kinds of things you would send to --</p> <p>14 A. Correct.</p> <p>15 Q. -- Analysis Group --</p> <p>16 A. This is.</p> <p>17 Q. -- periodically, but it would not</p> <p>18 say?</p> <p>19 A. Correct.</p> <p>20 Q. It would say "expert services" and</p> <p>21 the number of hours?</p> <p>22 A. Yes.</p> <p>23 Q. It wouldn't indicate what you're</p> <p>24 doing?</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. Have you produced those?</p> <p>2 A. I haven't produced anything other</p> <p>3 than I've produced --</p> <p>4 Q. Yes.</p> <p>5 A. -- I sent that to him. Or not to</p> <p>6 him but...</p> <p>7 Q. Do you have any objection -- do you</p> <p>8 have any objection producing -- the invoices will</p> <p>9 tell us when you did work, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And it will tell you how much time</p> <p>12 you spent on the work that you did in preparation</p> <p>13 for your MDL report and your Carl and Balderrama</p> <p>14 reports, correct?</p> <p>15 A. Correct.</p> <p>16 Q. All right. And we are going to ask</p> <p>17 that that be produced.</p> <p>18 Okay?</p> <p>19 A. Okay.</p> <p>20 MR. EWALD: And we'll take</p> <p>21 that under advisement subject to our</p> <p>22 objections and we need to confer.</p> <p>23 BY MR. TISI:</p> <p>24 Q. So let's talk about your methodology</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 for a moment. We've talked about your 2 qualifications. Let's talk about your 3 methodology. 4 You used the word "sensemaking." 5 Would you explain that in layman's 6 term for Uncle Charlie? 7 A. I believe I answered that question 8 earlier today. 9 Q. Enlighten me again, please. 10 A. Again, it is a well-established 11 framework in organization studies, organization 12 behavior, organization theory. 13 Q. And what does it attempt to do? 14 A. It attempts to provide insight into 15 how people -- how organizations size up the 16 situation. How they understand what they're 17 facing. Before people and organizations take 18 action, they have to understand what they're 19 facing. This is a way of understanding the 20 institutionalized knowledge that is developed in 21 an organization. 22 Q. Okay. So I'm just a layperson here. 23 I have to confess. This is the first time I've 24 ever deposed a behavioral, organizational expert.</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. Sure. 2 A. It's a process of how information 3 enters an organization, how it's interpreted, how 4 it's acted upon, how it's affirmed. And as I said 5 earlier today, it really entails in some way for 6 lay people, who don't really understand it, what's 7 the story? Now what? 8 Q. Okay. 9 A. It is the knowledge that we have 10 that affects our actions. 11 Q. Okay. Okay. So I'm taking away 12 from this explanation three questions as I'm 13 trying to process it. You tell me whether or not 14 I'm making sense. 15 But the three questions are: What 16 are they facing? Correct? 17 A. Yes, it's -- that -- that's a -- 18 Q. That's part of it? 19 A. That's an outcome. The process is, 20 you know, what are we doing to be able to get 21 information -- 22 Q. Okay. 23 A. -- that gives us a sense of -- of, 24 you know, of the landscape.</p>
<p style="text-align: right;">Page 99</p> <p>1 Sensemaking is an attempt to -- and 2 what's the phrase you just used? I wish I had it 3 in front of me. It's an attempt to look at what 4 they're facing at the time? 5 A. Sensemaking is a way to understand 6 the process of how entities come to understand and 7 how they develop their institutionalized knowledge 8 about particular situations. 9 Q. Okay. So if we are to use the word, 10 what are they facing? Okay? We talked about 11 before. 12 One of the things we're trying to 13 figure out, for example, what J&J was facing in 14 terms of -- I'm not talking about disruptive 15 ambiguity, but in terms of what they're facing on 16 the issues relating to the safety of talc, that 17 could come from various sources both external and 18 internal, correct? 19 A. It's a process -- 20 Q. Right. 21 And what they're facing -- 22 A. -- of how -- 23 Q. I'm sorry. 24 A. Can I just continue?</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. Okay. So four questions. 2 You got to get information about the 3 landscape, right? 4 A. It's a process. 5 Q. Right. 6 And part of that process is looking 7 external to the company, for example. You got to 8 look at the environment in which you're working. 9 True? 10 A. There are many things that you might 11 want to look at and, you know, I can tell -- 12 Q. I'm asking -- I'm asking just one at 13 a time because I'm trying to wrap my head around 14 it. Okay? So just bear with me. 15 One of the things that you do is 16 you -- as part of this sensemaking process -- is 17 you have to get information external to the 18 organization? Again, can come from various 19 sources but you got to get information externally, 20 if it's available? 21 A. I guess I'm having trouble 22 understanding what you're asking. 23 Because, generally speaking, you can 24 think about it as sensemaking is a process that</p>

<p style="text-align: right;">Page 102</p> <p>1 entails, you know, how -- how does -- how does 2 information enter an organization? There are best 3 practices. One best practice would be, yes, to -- 4 to go broad and deep in sources of information 5 because that doesn't always happen. 6 Q. Okay. 7 A. So, for example, I studied 8 organizations that actually don't -- who don't 9 collect information at all. They decide that 10 internally, you know, "We know best." That 11 happened in Toyota when I studied Toyota. 12 And so, you know, I mean, there are 13 many things that go into it. 14 Q. So let's -- let's break it up, and I 15 don't want to interrupt you but, honestly, I'm 16 trying to get an understanding of this method. 17 Okay? So just -- just let me -- 18 A. It's number -- can I just say that 19 you used the term "method." It's not a method. 20 It's a conceptual framework. 21 Q. Okay. Conceptual framework. 22 A. Uh-huh. 23 Q. Bear with me because I'm just a 24 stupid lawyer. Okay?</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. And then once you collect all the 2 information as best as you can from external 3 sources and internal sources, you pull all 4 together and you try to make decisions, correct? 5 A. It is an ongoing process. 6 Q. True. Okay. 7 And for Johnson & Johnson, okay, you 8 have to be doing this continuing throughout the 9 lifecycle of the product. True? 10 A. Right. Sensemaking is occurring 11 throughout -- throughout time. 12 Q. Right. 13 A. And it is especially important when 14 there is disruptive ambiguity. 15 Q. Okay. We'll talk about disruptive 16 ambiguity in a minute. Give me one concept at a 17 time. Okay? 18 So you now have sensemaking. You 19 have to understand the process during the 20 lifecycle of the issue you're discussing. 21 And in this case, we have -- we have 22 a product, let's say, from the 1970s through the 23 2000s. Throughout the product, you cover about 24 40, 50 years, generally speaking, in your report,</p>
<p style="text-align: right;">Page 103</p> <p>1 One of the things you look at is 2 what's -- if it's available, a good sensemaking 3 process framework is to look at what's happening 4 outside your organization. True? 5 A. Best practices -- I mean, I'm 6 thinking -- (laugh). I don't know whether we're 7 on the same page. 8 Q. I don't really know what's 9 controversial about that. 10 Do you look at the environment in 11 which the company is operating? 12 A. Where, I mean, a best practice would 13 be searching broad and deep -- 14 Q. Okay. 15 A. -- for information. 16 Q. Okay. 17 A. Working with experts to get 18 information. 19 Q. Okay. 20 A. Drawing on others' expertise. 21 Q. Okay. And you would also look 22 within the organization? 23 A. You can look within the organization 24 as well.</p>	<p style="text-align: right;">Page 105</p> <p>1 correct? 2 A. Generally speaking, I have looked at 3 what the patterns of action -- 4 Q. Right. 5 A. -- over decades, correct. 6 Q. Okay. Both inside the organization 7 and outside the organization. True? 8 A. I'm really uncomfortable with the 9 way you're characterizing it. 10 Q. Help me. 11 A. It's the breadth of information -- 12 Q. Okay. 13 A. -- that an organization is seeking. 14 Q. Okay. 15 A. In this case, I was trying to 16 ascertain how active J&J was in pursuing 17 scientific knowledge about the safety of its 18 product. 19 Q. Okay. 20 A. What kinds of actions was it taking 21 and what, you know, what resulted from -- from 22 that -- 23 Q. Okay. 24 A. -- and whether or not they -- their</p>

<p style="text-align: right;">Page 106</p> <p>1 actions demonstrated that they cared about --</p> <p>2 about the well-being of consumers.</p> <p>3 Q. Okay. So knowledge of the safety of</p> <p>4 their product is important, correct?</p> <p>5 I'm writing down the things --</p> <p>6 A. That's --</p> <p>7 Q. -- that you say.</p> <p>8 One of the things they need to know</p> <p>9 over the lifecycle of the product is the knowledge</p> <p>10 as it is being developed over time. True?</p> <p>11 A. I am saying -- (laugh).</p> <p>12 Q. I'm using your words. I'm trying to</p> <p>13 do my best here. Help me.</p> <p>14 A. Because I think that you're</p> <p>15 misrepresenting or mischaracterizing --</p> <p>16 Q. I am not.</p> <p>17 A. -- what I had to say.</p> <p>18 Q. Okay. So let's --</p> <p>19 A. It is the process. In this case,</p> <p>20 what I have studied is how actively J&J was in</p> <p>21 pursuing scientific knowledge about the safety of</p> <p>22 its product and whether the actions that it was</p> <p>23 taking were consistent with what we would expect</p> <p>24 to see in a company that cared about the</p>	<p style="text-align: right;">Page 108</p> <p>1 Ambiguity means that there are multiple and</p> <p>2 conflicting interpretations of what's going on.</p> <p>3 Q. Okay. So uncertainty would, for</p> <p>4 example, the Cramer study, the publication of the</p> <p>5 Cramer study and the subsequent epidemiologies</p> <p>6 that came out, be part of raising questions that</p> <p>7 would be disruptive ambiguity?</p> <p>8 A. I think any -- any -- any study or</p> <p>9 any piece of information that conflicts with what</p> <p>10 our -- what we think would be considered --</p> <p>11 considered that. I mean, it's not black and</p> <p>12 white. I mean, it's --</p> <p>13 Q. Okay.</p> <p>14 A. There are interpretations.</p> <p>15 Q. It happens over time. Things</p> <p>16 happen, and I get it. Look, this part of it I'm</p> <p>17 really just trying to understand. Okay?</p> <p>18 A. Yeah.</p> <p>19 Q. So -- so over time things happen</p> <p>20 that cause people to react and evaluate. True?</p> <p>21 A. Over time things happen that aren't</p> <p>22 consistent with our -- with the way we think the</p> <p>23 world is working and so they -- you know, it's a</p> <p>24 surprise.</p>
<p style="text-align: right;">Page 107</p> <p>1 well-being of its consumers.</p> <p>2 Q. Over time?</p> <p>3 A. Its patterns. I said earlier that I</p> <p>4 was looking at patterns of action over decades.</p> <p>5 Q. That's what I want to know. Okay?</p> <p>6 It's not limited to a particular</p> <p>7 month or a day. It's looking at the lifecycle of</p> <p>8 the product, and in this case, we're talking</p> <p>9 about, let's say, from the late '60s, early '70s</p> <p>10 through the present. True?</p> <p>11 A. I am not -- I am not thinking about</p> <p>12 it as a lifecycle of the product. I am thinking</p> <p>13 about it as a process --</p> <p>14 Q. Okay.</p> <p>15 A. -- of understanding and creating</p> <p>16 institutionalized knowledge over time.</p> <p>17 Q. Now, you talked about disruptive</p> <p>18 ambiguity several times. Let me get a definition</p> <p>19 of what that means.</p> <p>20 A. It means that there's something</p> <p>21 that, you know, surprised us that we weren't</p> <p>22 expecting.</p> <p>23 Q. Okay.</p> <p>24 A. It just means uncertainty.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. All right. So now you talked about</p> <p>2 the disruptive ambiguity in the 1970s relating to</p> <p>3 asbestos that was, in your opinion, resolved by</p> <p>4 the late 1970s, correct?</p> <p>5 A. Yes.</p> <p>6 Q. All right. And then there's this</p> <p>7 Cramer report that comes out and disruptive</p> <p>8 ambiguity kind of picks up again, right?</p> <p>9 A. I, you know, I wouldn't -- not</p> <p>10 necessarily, no.</p> <p>11 Q. Not necessarily, but it's something</p> <p>12 -- I think the phrase you used something out of</p> <p>13 the ordinary that challenges the way we thought</p> <p>14 things worked, correct?</p> <p>15 A. I, you know, I mean, I'd have to --</p> <p>16 I'd have to think about that.</p> <p>17 Q. Okay.</p> <p>18 A. I don't know that I can say that for</p> <p>19 sure.</p> <p>20 Q. Well, you know over time there have</p> <p>21 been 30, 40 epidemiology studies of different, of</p> <p>22 different structures, different organizations that</p> <p>23 talk about the potential for -- for one way or the</p> <p>24 other for talc to cause ovarian cancer, right?</p>

<p style="text-align: right;">Page 110</p> <p>1 MR. EWALD: Objection to the</p> <p>2 form.</p> <p>3 THE WITNESS: I know there</p> <p>4 have been studies of ovarian cancer.</p> <p>5 BY MR. TISI:</p> <p>6 Q. Right.</p> <p>7 A. I also know that there have been</p> <p>8 other things happening in the regulatory</p> <p>9 environment that have provided other signals about</p> <p>10 with what's -- what's --</p> <p>11 Q. Right.</p> <p>12 A. -- what's up.</p> <p>13 Q. And that's -- this is not -- I'm not</p> <p>14 -- honestly, I'm just really trying to get it.</p> <p>15 Study published. Other studies</p> <p>16 happen. Regulatory people weigh in. Academic</p> <p>17 organizations weigh in.</p> <p>18 That can be disruptive ambiguity,</p> <p>19 right?</p> <p>20 A. I mean, it can be or it might not</p> <p>21 be.</p> <p>22 Q. Okay.</p> <p>23 A. Depending on, you know, depending on</p> <p>24 what's happening in the context.</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. Now, on page -- paragraph 52 of your</p> <p>2 report, if you go to that.</p> <p>3 A. Uh-huh.</p> <p>4 Q. Again, you know this is ovarian</p> <p>5 cancer case, right?</p> <p>6 A. Yep.</p> <p>7 Q. Paragraph 52 in the middle of the</p> <p>8 paragraph says:</p> <p>9 "This case was inherently defined by</p> <p>10 the allegations that J&J baby powder/talc products</p> <p>11 were contaminated with asbestos and that these</p> <p>12 allegedly contaminated J&J baby powder/talc</p> <p>13 products caused plaintiffs to develop cancer."</p> <p>14 Do you see that?</p> <p>15 A. I see that.</p> <p>16 Q. Is that your understanding of how</p> <p>17 this case was defined?</p> <p>18 A. That's how I defined it.</p> <p>19 Q. So the case wasn't defined to you</p> <p>20 along the lines of: There have been 40 years of</p> <p>21 epidemiology studies which demonstrated an</p> <p>22 increased risk of ovarian cancer and we're trying</p> <p>23 to understand them and that those studies</p> <p>24 establish the risk?</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. *All right. So how did -- do you</p> <p>2 know how J&J got your name?</p> <p>3 A. I have no idea.</p> <p>4 Q. Who first contacted you?</p> <p>5 A. Kim -- Kris Comeaux from Analysis</p> <p>6 Group first contacted me.</p> <p>7 Q. So is it your understanding that the</p> <p>8 Analysis Group was contacted by J&J to look for an</p> <p>9 expert and you came in mind? I mean, did you ask</p> <p>10 any questions about that?</p> <p>11 A. No.</p> <p>12 Q. You just said, "Yeah, sure, I'll do</p> <p>13 it"?</p> <p>14 A. I asked to know what -- what the</p> <p>15 project entailed and I thought it would be</p> <p>16 interesting, and I have worked with the Analysis</p> <p>17 Group before and so I said, you know. I didn't</p> <p>18 know what I'd find.</p> <p>19 Q. Uh-huh. And when is the first time</p> <p>20 you met a lawyer for J&J?</p> <p>21 A. It was sometime, I think, in the --</p> <p>22 I do not remember. It was sometime in 2019, but</p> <p>23 it was after I started working on the project with</p> <p>24 the team.</p>	<p style="text-align: right;">Page 113</p> <p>1 MR. EWALD: Objection to form.</p> <p>2 BY MR. TISI:</p> <p>3 Q. It was solely tethered to asbestos.</p> <p>4 True?</p> <p>5 A. It was -- it was tethered to the</p> <p>6 safety of the product.</p> <p>7 Q. Okay. So, but the safety of the</p> <p>8 product can come -- the questions about the safety</p> <p>9 of the product can come from different sources,</p> <p>10 correct?</p> <p>11 A. Questions about the safety of -- of</p> <p>12 the product can come from many sources --</p> <p>13 Q. Right.</p> <p>14 A. -- and -- and that's --</p> <p>15 Q. Asbestos could be one --</p> <p>16 A. -- what I took on.</p> <p>17 Q. I'm sorry. I didn't mean to</p> <p>18 interrupt you.</p> <p>19 Asbestos could be one of them,</p> <p>20 correct?</p> <p>21 A. Asbestos can be one of them.</p> <p>22 Q. Okay. Epidemiology studies could be</p> <p>23 another source of -- of -- of disruptive</p> <p>24 ambiguity. True?</p>

<p style="text-align: right;">Page 114</p> <p>1 A. I -- I don't know where you're --</p> <p>2 you're going with that. That didn't -- I'm sorry,</p> <p>3 that didn't --</p> <p>4 Q. You don't need to know where I'm</p> <p>5 going. You need to answer my question.</p> <p>6 A. That -- what your question didn't</p> <p>7 follow the original question that you were asking.</p> <p>8 Q. Well, it doesn't have to follow.</p> <p>9 My question is -- my question is --</p> <p>10 MR. EWALD: Chris, I'm sorry.</p> <p>11 You said asbestos is a source against?</p> <p>12 MR. TISI: Let me rephrase the</p> <p>13 question.</p> <p>14 MR. EWALD: Yeah. Right.</p> <p>15 MR. TISI: Let me rephrase the</p> <p>16 question.</p> <p>17 BY MR. TISI:</p> <p>18 Q. Was the case initially defined to</p> <p>19 you as: Plaintiffs in this case have said</p> <p>20 asbestos causes ovarian cancer and there's</p> <p>21 asbestos in the talc? Is that how it was</p> <p>22 initially explained to you?</p> <p>23 A. I do not recall how the case was</p> <p>24 initially explained to me.</p>	<p style="text-align: right;">Page 116</p> <p>1 association between talc and ovarian cancer.</p> <p>2 Q. Okay. Now, you spent a lot of time</p> <p>3 talking about asbestos, but not a lot of time</p> <p>4 talking about the association that was discussed</p> <p>5 over 40 years in the medical literature. True?</p> <p>6 MR. EWALD: Objection to form.</p> <p>7 Vague.</p> <p>8 THE WITNESS: I did not do a</p> <p>9 systematic study of --</p> <p>10 BY MR. TISI:</p> <p>11 Q. Okay.</p> <p>12 A. -- of ovarian cancer.</p> <p>13 I talked to experts in the company.</p> <p>14 I looked at what was happening in the scientific</p> <p>15 literature and what J&J was aware of with respect</p> <p>16 to the regulators and regulations and things that</p> <p>17 were coming out of the regulatory community.</p> <p>18 Q. But if your question -- if the</p> <p>19 question when you say inherently defined by the</p> <p>20 allegations Johnson's Baby Powder talc products</p> <p>21 were contaminated with asbestos and those</p> <p>22 allegedly contaminated J&J baby products caused</p> <p>23 the plaintiffs to develop cancer, if your inherent</p> <p>24 definition of the nature of our claims is wrong,</p>
<p style="text-align: right;">Page 115</p> <p>1 I was initially contacted to do a</p> <p>2 study, an analysis of many decades of -- of</p> <p>3 evidence and research to come to an understanding</p> <p>4 of what J&J knew and when about the potential for</p> <p>5 its product to be unsafe, and whether or not the</p> <p>6 actions that J&J had taken demonstrate -- because</p> <p>7 I'm an organization scientist -- whether it showed</p> <p>8 a company that cared about the well-being of its</p> <p>9 consumers.</p> <p>10 Q. When you say -- where I'm getting</p> <p>11 hung up, you say the product is unsafe.</p> <p>12 Unsafe for women who use it for --</p> <p>13 for genital hygiene to cause ovarian cancer.</p> <p>14 Is that included in the unsafe</p> <p>15 portion of what you've just described?</p> <p>16 A. It was included --</p> <p>17 Q. Okay.</p> <p>18 A. -- which I have written.</p> <p>19 Q. Right.</p> <p>20 A. If I may?</p> <p>21 Q. Of course. I'm letting you.</p> <p>22 A. You know, I mean, my assignment was</p> <p>23 to understand the potential for asbestos in the</p> <p>24 product, as well as the potential for the</p>	<p style="text-align: right;">Page 117</p> <p>1 then everything that happens afterward would be</p> <p>2 called into question. True?</p> <p>3 A. No.</p> <p>4 MR. EWALD: Objection to form.</p> <p>5 Legal conclusions.</p> <p>6 Go ahead.</p> <p>7 BY MR. TISI:</p> <p>8 Q. Okay.</p> <p>9 A. I generally -- as I said, my role in</p> <p>10 the case was to examine what --</p> <p>11 Q. All of it?</p> <p>12 A. -- J&J knew --</p> <p>13 MR. EWALD: She's doesn't need</p> <p>14 help with her answer.</p> <p>15 Go ahead.</p> <p>16 THE WITNESS: What J&J knew</p> <p>17 and when about the safety of its products</p> <p>18 and whether or not their actions were</p> <p>19 consistent with a company that cared</p> <p>20 about the well-being of its consumers.</p> <p>21 BY MR. TISI:</p> <p>22 Q. So it's not just limited to</p> <p>23 asbestos. It's just the safety of the product</p> <p>24 generally?</p>

<p style="text-align: right;">Page 118</p> <p>1 A. Generally speaking --</p> <p>2 Q. Okay.</p> <p>3 A. -- as I said, and I've written it</p> <p>4 earlier throughout this report, you know, what J&J</p> <p>5 knew and when about the allegation of asbestos in</p> <p>6 the product and what they knew about the potential</p> <p>7 association between talc and ovarian cancer.</p> <p>8 Q. Perfect. Thank you. Because it</p> <p>9 wasn't clear to me, and I appreciate that</p> <p>10 clarification. Thank you.</p> <p>11 A. And it's -- it's in here several</p> <p>12 times.</p> <p>13 Q. Well, several times you talk about</p> <p>14 asbestos, and I want to make sure that your</p> <p>15 analysis is not solely dependent upon your</p> <p>16 opinions about asbestos.</p> <p>17 It's about the safety of talc and</p> <p>18 ovarian cancer whatever the source of the</p> <p>19 information?</p> <p>20 A. Yes.</p> <p>21 MR. TISI: Okay. Could you,</p> <p>22 Madam Court Reporter, just mark that</p> <p>23 question and answer because I'm going to</p> <p>24 come back to it, if you don't mind.</p>	<p style="text-align: right;">Page 120</p> <p>1 documents considered --</p> <p>2 Q. They are not.</p> <p>3 A. -- then I reviewed it.</p> <p>4 Then I did not.</p> <p>5 Q. Do you know --</p> <p>6 A. I mean, although I can't really say</p> <p>7 that because I have reviewed many things that I</p> <p>8 don't have on the considered list, but I do not</p> <p>9 remember.</p> <p>10 Q. Do you know a Mr. Caverna, who's an</p> <p>11 advertising person? Have you looked at him?</p> <p>12 A. I don't recall.</p> <p>13 Q. John O'Shaughnessy?</p> <p>14 A. I believe that I reviewed that a</p> <p>15 couple years ago.</p> <p>16 Q. Okay. That's one you did review.</p> <p>17 A. I do not remember.</p> <p>18 Q. Donald Hicks, who is a testing</p> <p>19 expert?</p> <p>20 A. I -- I may have. I -- I do not</p> <p>21 remember.</p> <p>22 Q. Julie Pier for Imerys, a testing</p> <p>23 expert?</p> <p>24 A. I recall having reviewed Dr. -- I</p>
<p style="text-align: right;">Page 119</p> <p>1 BY MR. TISI:</p> <p>2 Q. Now, you reviewed the testimony -- I</p> <p>3 think in your process you interviewed</p> <p>4 Drs. Nicholson and Hopkins.</p> <p>5 Did you review any of the</p> <p>6 depositions taken in the MDL?</p> <p>7 A. I would -- do not -- I --</p> <p>8 Q. Let me give you some names and ask</p> <p>9 whether you remember them.</p> <p>10 A. I --</p> <p>11 Q. Did you --</p> <p>12 A. Did you ask if I interviewed?</p> <p>13 Q. No, did you review the testimony.</p> <p>14 A. Okay.</p> <p>15 Q. Have you reviewed the testimony of</p> <p>16 Catherine Wille?</p> <p>17 A. I do not recall.</p> <p>18 Q. Have you reviewed the testimony of</p> <p>19 Dr. Musket, an outside epidemiologist who</p> <p>20 conducted --</p> <p>21 A. No. I mean, I've heard the name. I</p> <p>22 do not recall.</p> <p>23 Q. John McKeegan?</p> <p>24 A. If it -- if those are in my</p>	<p style="text-align: right;">Page 121</p> <p>1 mean Julie.</p> <p>2 Q. Because they're not on your list.</p> <p>3 Any other places?</p> <p>4 A. I did. I believe that I reviewed</p> <p>5 her.</p> <p>6 Q. Okay. What about any other Imerys</p> <p>7 witnesses? Do you remember that?</p> <p>8 A. I don't remember.</p> <p>9 Q. Lorena Telofski?</p> <p>10 A. It sounds familiar. I may have. I</p> <p>11 don't remember.</p> <p>12 Q. You said you considered the -- the</p> <p>13 testimony and the opening statements of the</p> <p>14 plaintiffs and defendant in the Ingham case.</p> <p>15 Did you remember saying you</p> <p>16 considered those things?</p> <p>17 A. Uh-huh.</p> <p>18 Q. I'm sorry. Is that a yes?</p> <p>19 A. Yes, that's a yes.</p> <p>20 Q. Okay. Did you review the judicial</p> <p>21 findings of the Missouri Court of Appeals which</p> <p>22 found Johnson & Johnson to have been subject to</p> <p>23 punitive damages for misleading the public about</p> <p>24 the safety of talc?</p>

<p style="text-align: right;">Page 122</p> <p>1 A. I --</p> <p>2 MR. EWALD: Objection to form.</p> <p>3 THE WITNESS: I do not</p> <p>4 remember.</p> <p>5 BY MR. TISI:</p> <p>6 Q. You did not review that?</p> <p>7 A. I don't recall.</p> <p>8 MR. EWALD: And, Chris, I just</p> <p>9 want to make sure that amongst the</p> <p>10 materials you got on Saturday, there was</p> <p>11 an updated reliance list that had</p> <p>12 highlighted a couple of additions to the</p> <p>13 list. Did you get that?</p> <p>14 MR. TISI: I did, but I didn't</p> <p>15 see it, but perhaps maybe it's in there</p> <p>16 and we can -- I can double-check.</p> <p>17 MR. EWALD: Okay. It does</p> <p>18 list including the O'Shaughnessy</p> <p>19 deposition.</p> <p>20 MR. TISI: Okay. That's fine.</p> <p>21 BY MR. TISI:</p> <p>22 Q. Okay. So when you -- let's talk</p> <p>23 about your interviews of Dr. Hopkins and Dr. --</p> <p>24 let's go back to that, if you don't mind, Exhibit</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. Okay. I mean, before I interviewed</p> <p>2 you today, I have -- I wrote down questions here</p> <p>3 that I knew I was going to ask you.</p> <p>4 Did you do that for the -- for</p> <p>5 these -- these witnesses? You just meet them for</p> <p>6 coffee and ask them questions that popped into</p> <p>7 your head?</p> <p>8 A. I --</p> <p>9 MR. EWALD: Objection to form.</p> <p>10 THE WITNESS: I think I just</p> <p>11 answered that.</p> <p>12 I probably had a list of</p> <p>13 questions. I don't remember it and I</p> <p>14 don't have them.</p> <p>15 BY MR. TISI:</p> <p>16 Q. Okay. So not the questions you</p> <p>17 asked, but the notes of your questions. For</p> <p>18 example, let's take Dr. Nicholson.</p> <p>19 You see that?</p> <p>20 A. Yes.</p> <p>21 Q. Did you ask her at all about the</p> <p>22 epidemiology evidence that developed in the 1990s</p> <p>23 and 2000s? Did you ask her about that?</p> <p>24 A. I asked her about -- I mean, we</p>
<p style="text-align: right;">Page 123</p> <p>1 Number 49.</p> <p>2 First of all, did you -- did you</p> <p>3 record in any way, other than Exhibit 49, your</p> <p>4 interview with any of these people?</p> <p>5 A. No.</p> <p>6 Q. Okay. Did you have a list of</p> <p>7 questions when you went in?</p> <p>8 A. I think I had questions. I don't</p> <p>9 recall that.</p> <p>10 Q. You don't remember what questions</p> <p>11 you had?</p> <p>12 A. No.</p> <p>13 Q. So you don't have -- when you</p> <p>14 conduct interviews in trying to do sensemaking, as</p> <p>15 part of your analytic methodology, did you -- do</p> <p>16 you have a standard set of questions you ask</p> <p>17 people when you interview them?</p> <p>18 A. It's context-dependent.</p> <p>19 Q. Okay. Did you have -- did you</p> <p>20 develop the context before interviewing these</p> <p>21 people and having a list of questions?</p> <p>22 A. I thought about it before I</p> <p>23 interviewed them. I probably had questions. I</p> <p>24 don't -- I don't have them.</p>	<p style="text-align: right;">Page 125</p> <p>1 discussed what she was paying attention to or</p> <p>2 whatever, and -- and she told me the kinds of</p> <p>3 things that she was doing.</p> <p>4 Q. Did she talk about the epidemiology</p> <p>5 studies that had -- that had started in 1980s,</p> <p>6 1990s, 2000s, 2010s? Did she talk about those?</p> <p>7 A. I know that she was paying attention</p> <p>8 to the literature and that's what I know. I</p> <p>9 didn't go into any specific studies.</p> <p>10 Q. You didn't ask her. I didn't ask</p> <p>11 you about any specific studies.</p> <p>12 Did you ask them, for example, "Did</p> <p>13 anybody ever recommend that you look at corn --</p> <p>14 change and look at cornstarch in the '80s, '90s,</p> <p>15 2000s, 2021 as a potential safer alternative to</p> <p>16 your talcum powder product?" Did you ask her that</p> <p>17 question?</p> <p>18 A. I already had examined the</p> <p>19 literature before then. So I knew what was</p> <p>20 happening. I asked her the questions that I asked</p> <p>21 here.</p> <p>22 Q. Well, you said -- let's break that</p> <p>23 down. I mean, you know, let's be specific.</p> <p>24 You said you did not look at the</p>

<p style="text-align: right;">Page 126</p> <p>1 epidemiology studies?</p> <p>2 A. What I said was, I didn't do a</p> <p>3 systematic analysis --</p> <p>4 Q. Okay.</p> <p>5 A. -- of the -- of the scientific</p> <p>6 literature.</p> <p>7 Q. So you did or did not read the</p> <p>8 epidemiology studies?</p> <p>9 A. I have read some studies over time.</p> <p>10 I don't remember which ones that I read, but I did</p> <p>11 not do a systematic analysis, as I said earlier.</p> <p>12 Q. Okay. So my question is: Did you</p> <p>13 ask her the specific question, "At any time in the</p> <p>14 '90s, 2000s, 2010s, did the company consider</p> <p>15 changing to cornstarch"?</p> <p>16 A. I do not recall asking that</p> <p>17 question.</p> <p>18 Q. Did you ask her the question about</p> <p>19 whether or not they talked about adding an</p> <p>20 instruction to women saying, you know, for safety</p> <p>21 sake, you better not -- we don't recommend you use</p> <p>22 it in the genital area?</p> <p>23 A. Generally speaking, I was asking</p> <p>24 Dr. Nicholson about her basic actions and the</p>	<p style="text-align: right;">Page 128</p> <p>1 Did you ask her how she paid</p> <p>2 attention?</p> <p>3 A. I -- I mean, yes. Like she's</p> <p>4 paying, you know, that she -- I mean, if you want</p> <p>5 to go through these notes, I'm happy to do that.</p> <p>6 Q. I'm asking. Look at the notes. You</p> <p>7 tell me what she paid attention to. Tell me --</p> <p>8 tell me what studies she looked at. Tell me what</p> <p>9 committee meetings she went to.</p> <p>10 Tell me what -- what -- what -- at</p> <p>11 what periods of time they did an analysis as to</p> <p>12 whether or not they changed to cornstarch. Tell</p> <p>13 me what specifically you asked her about any of</p> <p>14 the issues relating to this case.</p> <p>15 A. I was --</p> <p>16 MR. EWALD: Objection to form.</p> <p>17 Compound.</p> <p>18 Go ahead.</p> <p>19 THE WITNESS: I wanted to</p> <p>20 know, you know, what she was thinking</p> <p>21 about, what she was doing, what J&J was</p> <p>22 doing. I wanted to know about the</p> <p>23 structure of the organization, you know,</p> <p>24 how it thinks about safety, how it was</p>
<p style="text-align: right;">Page 127</p> <p>1 kinds of things she was doing, how the</p> <p>2 organization was structured, as you can see from</p> <p>3 this interview.</p> <p>4 Q. Did you ask her whether they had</p> <p>5 policies and procedures to do that?</p> <p>6 A. She -- she talked a little bit about</p> <p>7 the way the organization was structured --</p> <p>8 Q. Did she tell you --</p> <p>9 A. -- related to quality and safety.</p> <p>10 Q. Did she tell you that there was</p> <p>11 specific policies and procedures that would --</p> <p>12 that would -- that were in place at the time that</p> <p>13 would allow them to actually do an analysis</p> <p>14 according to a pre-described plan?</p> <p>15 A. I -- I do not recall specifically</p> <p>16 all the things that -- that I asked her.</p> <p>17 Q. Well, I mean, other than asking her</p> <p>18 whether she likes apple pie, did you ask her the</p> <p>19 recipe of apple pie?</p> <p>20 MR. EWALD: Objection.</p> <p>21 BY MR. TISI:</p> <p>22 Q. I mean, I'm not being facetious</p> <p>23 here. This is a lot of -- a lot of stuff about</p> <p>24 "We paid attention."</p>	<p style="text-align: right;">Page 129</p> <p>1 thinking about other -- other things, and</p> <p>2 that's what I asked her about.</p> <p>3 BY MR. TISI:</p> <p>4 Q. Do you know when she first started</p> <p>5 becoming involved in the talc issue at J&J?</p> <p>6 A. I might have written about that in</p> <p>7 here somewhere. I do not recall specifically.</p> <p>8 Q. Do you know that she didn't become</p> <p>9 involved until the mid- to late 2010s?</p> <p>10 A. I don't recall when.</p> <p>11 Q. Did you interview anybody -- John</p> <p>12 Hopkins left the company in the early '80s,</p> <p>13 correct?</p> <p>14 A. Well, he was still testifying for</p> <p>15 the company.</p> <p>16 Q. All right. I'm not asking what he</p> <p>17 testified to because, you know, that might be</p> <p>18 subject to hindsight bias.</p> <p>19 I'm asking you: Did you speak to</p> <p>20 anybody who was actually at the company between</p> <p>21 the mid-1980s to the mid-2010s?</p> <p>22 A. I think for the issue of the NTP</p> <p>23 meetings, I think that I did interview two. I</p> <p>24 mean, I did -- I didn't interview them, but I</p>

<p style="text-align: right;">Page 130</p> <p>1 looked at their -- their depositions.</p> <p>2 Q. I'm asking whether you interviewed</p> <p>3 anybody that was actually there at the company</p> <p>4 that would be able to give you some insight as to</p> <p>5 -- let's look at what you said -- knowledge of</p> <p>6 what was coming into the company to evaluate the</p> <p>7 actions that were being taken as part of your</p> <p>8 sensemaking framework?</p> <p>9 A. Earlier today I highlighted that</p> <p>10 what's most important in my analysis is really</p> <p>11 understanding what was actually happening and</p> <p>12 using the primary data to do that --</p> <p>13 Q. Okay.</p> <p>14 A. -- and that's what I've done.</p> <p>15 Q. Okay. So just to be clear,</p> <p>16 Dr. Nicholson never told you about any policies</p> <p>17 and procedures that -- that were in place at the</p> <p>18 time to evaluate the safety of talc. True?</p> <p>19 A. I was not asking about policies and</p> <p>20 procedures. I was generally asking about: What</p> <p>21 is the structure? What are you doing? What are</p> <p>22 you thinking about? Etc.</p> <p>23 Q. Well, haven't you as part of your BP</p> <p>24 testimony testified that, according to your</p>	<p style="text-align: right;">Page 132</p> <p>1 A. I don't know anything more about</p> <p>2 Dr. Nicholson, other than what I --</p> <p>3 Q. Do you know she pled guilty to -- to</p> <p>4 being -- being held in contempt, right?</p> <p>5 MR. EWALD: Objection to form.</p> <p>6 Mischaracterizes.</p> <p>7 THE WITNESS: I don't know</p> <p>8 anything. I don't know anything one way</p> <p>9 or another.</p> <p>10 BY MR. TISI:</p> <p>11 Q. Okay. Do you know -- it says here,</p> <p>12 it says:</p> <p>13 "People want to do the right thing</p> <p>14 if people feel pressured."</p> <p>15 Do you see that statement?</p> <p>16 A. Let's see. Where is that?</p> <p>17 MR. EWALD: It's in the</p> <p>18 fourth.</p> <p>19 THE WITNESS: Yeah, I see it.</p> <p>20 BY MR. TISI:</p> <p>21 Q. Do you know what that means?</p> <p>22 A. Yeah, that people want to do -- in</p> <p>23 the organization that there is -- that there is</p> <p>24 the Credo and that people want to do the right</p>
<p style="text-align: right;">Page 131</p> <p>1 framework to evaluate a safety culture, you have</p> <p>2 to look at policies and procedures?</p> <p>3 A. Here I was not -- I was not studying</p> <p>4 the safety culture in this, and I did -- I used a</p> <p>5 completely different framework than my BP work.</p> <p>6 Q. Ah. So your framework is dependent</p> <p>7 upon the case in which you're -- you're testifying</p> <p>8 in, right?</p> <p>9 MR. EWALD: Objection to form.</p> <p>10 THE WITNESS: The framework</p> <p>11 depends on what is my -- what's the</p> <p>12 question that I'm trying to answer.</p> <p>13 BY MR. TISI:</p> <p>14 Q. Okay. All right. So there's a</p> <p>15 couple things I see in these notes that are --</p> <p>16 that I'm curious about.</p> <p>17 A. Uh-huh.</p> <p>18 Q. You say on the Nicholson -- first of</p> <p>19 all, do you know Dr. Nicholson was actually held</p> <p>20 in contempt by a court for not testifying in a</p> <p>21 case?</p> <p>22 MR. EWALD: Objection to form.</p> <p>23 BY MR. TISI:</p> <p>24 Q. Have you been told that?</p>	<p style="text-align: right;">Page 133</p> <p>1 thing, even if they feel pressured.</p> <p>2 Q. Okay. So now let me ask you this as</p> <p>3 part of the Credo.</p> <p>4 It's important that you not just</p> <p>5 have a Credo, you know. It's important to have</p> <p>6 enabling -- something that enables the Credo to</p> <p>7 actually be carried out, right? Policies,</p> <p>8 procedures, SOPs, etc. Companies need to have</p> <p>9 that, right?</p> <p>10 A. Standard operating procedures are --</p> <p>11 Q. Correct.</p> <p>12 A. -- pretty normal in organizations.</p> <p>13 Q. And it's important because people</p> <p>14 want to know what to do when safety issues arise,</p> <p>15 correct?</p> <p>16 A. That's one way to do it. There are</p> <p>17 many other ways to do it.</p> <p>18 Q. And they need to know who's</p> <p>19 accountable for executing on those issues,</p> <p>20 correct?</p> <p>21 A. You know, you're asking a pretty</p> <p>22 (laugh) -- I mean, it's a pretty broad question.</p> <p>23 I --</p> <p>24 Q. Well, you have a whole section here</p>

<p style="text-align: right;">Page 134</p> <p>1 in your appendix on -- on policies and procedures 2 and the Credo, right? 3 A. I have included a section on the 4 Credo. 5 Q. Right. 6 And -- but in order to execute on 7 the Credo, they have to have clear lines of 8 communication, clear lines of accountability, and 9 clear lines of what to do when situations arise, 10 correct? 11 A. That's -- I would -- I would say I 12 don't really agree with that. 13 Q. You don't agree. Okay. 14 A. I would say -- can I finish? 15 Q. Sure. Go ahead. 16 A. Okay. 17 Q. Please. 18 A. The Credo is a -- is a value 19 statement. 20 Q. A value statement, but you have to 21 have -- 22 A. And -- 23 MR. EWALD: Hold on. She's 24 not done.</p>	<p style="text-align: right;">Page 136</p> <p>1 said you put things in bins. 2 What are bins? 3 A. Categories. 4 Q. How did you define the categories? 5 A. As I said, we initially used 6 temporal categories. Things happening at this 7 time in the 1950s, the 1940s, 1960s, 1970s. And 8 then, you know, as it gets -- as over time it gets 9 a little bit more refined. And you could think of 10 the bins here and see 1, 2, 3, 4 that then over 11 time they get refined, and the data that were put 12 initially in those temporal categories are then 13 put into these categories. 14 So, for example, you know, the data 15 from the -- from 19, or not 19 -- 1898 or whatever 16 how much data we've got to the 1950s, '60s goes 17 into the early efforts and actions taken by J&J. 18 Q. All right. 19 A. And so it's just simply a category 20 system. 21 Q. Do you have a list of the bins you 22 used? 23 A. No. 24 Q. Okay. Now, one of the bins that's</p>
<p style="text-align: right;">Page 135</p> <p>1 BY MR. TISI: 2 Q. I thought you were finished. Go 3 ahead. 4 A. Yeah, and there are many ways for 5 people to act. It's essentially what do we do 6 when -- I mean, what values do we hold dear? 7 Q. You actually started to answer the 8 question. The "what do we do" part. Okay? 9 A. What do we -- right, and, you know, 10 there are many ways that people can take action. 11 Q. And they need to know. In an 12 organization, they need to have policies and 13 procedures that help them know what to do, who to 14 speak to, how to analyze issues. 15 Those are really important, correct? 16 SOPs. 17 A. They can be important. They may not 18 be important because there are many, you know, 19 because people act in various ways -- 20 Q. Okay. 21 A. -- under different conditions. 22 Q. Okay. Let's go back because we're 23 going to talk about that in a moment. 24 Methodology. In your report, you</p>	<p style="text-align: right;">Page 137</p> <p>1 not in your report is what did the epidemiology 2 studies say, correct? 3 A. Again, you know, I was not -- I was 4 not charged with looking at the epidemiology 5 studies. I'm not opining on epidemiology. 6 Q. But you're not -- but you're not an 7 expert in asbestos either, and you do a lot of 8 opining on that. True? 9 A. I am -- 10 MR. EWALD: Objection to form. 11 THE WITNESS: I am not 12 opining on asbestos either. 13 BY MR. TISI: 14 Q. Go to paragraph 12, if you could, of 15 your report. 16 Okay. Your Summary of Opinions 17 section. I just want to make sure I understand 18 the scope of your report. 19 It says you were retained by J&J and 20 you list what you were retained to do here, 21 correct? 22 A. Correct. 23 Q. Okay. And after you talk about 24 Ms. Carl and Ms. Balderrama, you say that</p>

<p style="text-align: right;">Page 138</p> <p>1 plaintiffs further allege that J&J and J&J -- I'm 2 sorry -- has and that J&J -- I'm sorry. 3 "Plaintiffs further allege that J&J 4 has known for decades that the talc in its baby 5 powder may pose health risks to consumers, and 6 that J&J ignored and covered up these health 7 risks." 8 Correct? 9 A. That's -- yeah, that's what I put. 10 Q. Okay. And that would include the 11 risk of ovarian cancer. True? 12 A. Yes. 13 Q. It's not just the risk of asbestos 14 and mesothelioma, right? 15 A. I believe we discussed this earlier. 16 Correct. 17 Q. I just want to be absolutely 100 18 percent clear -- 19 A. It's clear. 20 Q. -- you discuss talc and ovarian 21 cancer. Okay? 22 A. Again, the health risks -- 23 Q. Because if you're not going to 24 testify to that, I don't want to ask you</p>	<p style="text-align: right;">Page 140</p> <p>1 and asbestos. It also includes the association 2 between talc and ovarian cancer. True? 3 MR. EWALD: Objection. Asked 4 and answered a lot of times. 5 Go ahead. 6 THE WITNESS: I have said, I 7 have stated that several times this 8 morning. 9 BY MR. TISI: 10 Q. Okay. Okay. So let's talk about 11 ovarian cancer. Okay? 12 Paragraph number 36 of your report 13 you say when J&J -- in the third sentence, it 14 says: 15 "When J&J approved Johnson's Baby 16 Powder with Cornstarch for national sale in 1978, 17 it was not introduced as a replacement for 18 talc-based products -- powders, because by that 19 time much of the ambiguity and concern regarding 20 the safety of cosmetic talc had been resolved." 21 Do you see that? 22 A. Yes. 23 Q. Okay. That's not true, is it? 24 A. It is true.</p>
<p style="text-align: right;">Page 139</p> <p>1 questions. 2 A. The health risks of its -- of its 3 talc. 4 Q. And it says: 5 "These claims revolve around 6 questions of whether J&J's baby powder was 7 contaminated with asbestos or was otherwise unsafe 8 to use, and whether J&J did enough to warn users 9 of the alleged health risks." 10 Do you see that? 11 A. Uh-huh. 12 Q. Okay. I'm sorry. Is that a yes? 13 A. Yes. 14 Q. And you are addressing those 15 questions as well? 16 A. Correct. 17 Q. Okay. So it's not just whether or 18 not talc was contaminated with asbestos but 19 whether it was "otherwise unsafe to use"? 20 A. As I stated earlier, that it was 21 also the potential association between talc and 22 cancer. 23 Q. Okay. Okay. And just so we're a 24 hundred percent clear, it includes not just talc</p>	<p style="text-align: right;">Page 141</p> <p>1 Q. It's not. You don't think that 2 issues relating to the question about whether talc 3 can cause ovarian cancer were published in the 4 literature from the '80s, '90s, 2000s, 2010s, that 5 was also disruptive ambiguity? 6 A. Again, I mean, it's 7 context-dependent. 8 Q. Okay. 9 A. And so at this point in time, it was 10 pretty clear that the talc was safe. 11 Q. And all the studies that came 12 afterward did not raise any questions about 13 whether talc was safe after 1970. 14 Is that your testimony? 15 A. My testimony is that if we go to 16 later on in here is that J&J was paying attention 17 to the regulatory environment that suggested that 18 there was no association between talc and ovarian 19 cancer. 20 Q. That's kind of not my question. 21 MR. EWALD: Hold on. Let her 22 finish her answer. 23 MR. TISI: You really need to 24 answer my question.</p>

<p style="text-align: right;">Page 142</p> <p>1 MR. EWALD: No. Let her 2 finish her answer. 3 MR. TISI: I thought it was 4 done. 5 MR. EWALD: Are you done? 6 THE WITNESS: That because 7 J&J is paying attention to a tremendous 8 amount of -- 9 BY MR. TISI: 10 Q. Right. 11 A. -- of information, making sense of 12 it, affirming it with other people, and the 13 regulatory environment was quite -- was quite 14 clear -- 15 Q. Right. So the fact that -- 16 A. -- the whole time. 17 Q. So the fact that IARC said that talc 18 was a potential -- a potential cause of ovarian 19 cancer without asbestos and with asbestos was a 20 potential cause of ovarian cancer, those are not 21 -- that's not disruptive ambiguity? 22 A. Again, at that time, I mean, the FDA 23 was saying something different. 24 Q. Oh, we're going to -- we're going to</p>	<p style="text-align: right;">Page 144</p> <p>1 attention to -- 2 Q. That wasn't my question. 3 A. I -- 4 Q. Paying attention to is something 5 different. Okay? 6 A. (Laugh). 7 Q. I'm paying attention to that glass 8 of water right there. I'm looking at it. 9 A separate question is: Is there a 10 glass of water there, right? Two separate 11 questions, right? 12 My question is: Whether J&J was 13 paying attention or not, you would agree with me 14 that in the medical and scientific community, 15 there was questions about whether or not talc was 16 safe for women using it with respect to ovarian 17 cancer. True? 18 A. There have been questions about the 19 talc for many years -- 20 Q. Okay. 21 A. -- and many of those questions have 22 been answered. 23 Q. Fine. We'll talk about whether they 24 were answered or not.</p>
<p style="text-align: right;">Page 143</p> <p>1 look at the FDA, what the FDA said. 2 My question is: The FDA isn't the 3 only source of information, is it? 4 A. Again, no, the FDA -- I'm just 5 saying, J&J was paying attention to a lot of 6 different information and that was suggested. 7 Q. Right. 8 A. They're paying attention to the 9 scientific literature. Actively seeking out 10 information, and taking actions that suggested 11 that they had solid institutional knowledge of the 12 environment and took actions that demonstrated 13 that they were taking the well-being of consumers 14 into account. 15 Q. Respectfully, you're not answering 16 my question. My question was about disruptive 17 ambiguity. Okay? 18 You agree with me that there were 19 questions raised in the medical and scientific 20 community, including IARC, FDA, your own 21 institutions, talking about the potential of talc 22 causing ovarian cancer. 23 You agree to that? 24 A. I agree that J&J was paying</p>	<p style="text-align: right;">Page 145</p> <p>1 My question was: Was there 2 questions being raised? And the answer is yes. 3 True? 4 A. Again, I, you know, I did not look 5 at the whole literature on -- 6 Q. Okay. 7 A. -- talc and ovarian cancer and so 8 I'm, you know, I mean, there are -- I haven't done 9 that here. 10 Q. Okay. When you ask about whether or 11 not Johnson & Johnson was paying attention, one of 12 the things they would be paying attention to are 13 what scientists, academics, regulators, other 14 institutions were saying about the safety of talc. 15 True? 16 A. And as I've demonstrated in here in 17 this document, J&J was paying attention to that. 18 Q. Okay. Switch a little bit, talk 19 about a slightly different question. 20 We talked about cosmetics being 21 covered by the Food, Drug, and Cosmetic Act, 22 right? 23 Right? 24 A. You've mentioned that.</p>

<p style="text-align: right;">Page 146</p> <p>1 Q. Well, do you disbelieve me?</p> <p>2 A. I'm not --</p> <p>3 Q. It's called the Food, Drug, and</p> <p>4 Cosmetic Act.</p> <p>5 A. Okay.</p> <p>6 Q. It says the word "cosmetics" in it,</p> <p>7 right?</p> <p>8 A. I have not read the Act. I -- I --</p> <p>9 Q. That's not my question.</p> <p>10 A. Okay.</p> <p>11 Q. One of the things that you have to</p> <p>12 consider is what role does the company have to</p> <p>13 ensure the safety of its products. True?</p> <p>14 A. I have taken a decades-long look at</p> <p>15 the actions that J&J was taking, the routines that</p> <p>16 they had --</p> <p>17 Q. Right.</p> <p>18 A. -- patterns of activity over</p> <p>19 decades --</p> <p>20 Q. Right.</p> <p>21 A. -- to assure the safety of its</p> <p>22 product.</p> <p>23 Q. Okay. And in the Toyota case, you</p> <p>24 talked about, okay, one of the things you had to</p>	<p style="text-align: right;">Page 148</p> <p>1 MR. EWALD: Objection to form.</p> <p>2 THE WITNESS: I need a</p> <p>3 specific question.</p> <p>4 I am not opining in this</p> <p>5 case --</p> <p>6 BY MR. TISI:</p> <p>7 Q. Okay. Let's be specific.</p> <p>8 MR. EWALD: Hold on. Hold on.</p> <p>9 BY MR. TISI:</p> <p>10 Q. You want a specific question, I'll</p> <p>11 give you a specific question.</p> <p>12 A. But you cut me off.</p> <p>13 Q. Okay. Let's do it. Go ahead.</p> <p>14 Finish your question.</p> <p>15 A. Now I've forgotten.</p> <p>16 Q. Okay. So let me --</p> <p>17 A. But essentially what I was saying is</p> <p>18 my role here is not to opine from a regulatory</p> <p>19 standpoint.</p> <p>20 Q. Not asking that.</p> <p>21 A. I am not a regulator, and what I</p> <p>22 have done is -- is take a look at J&J. I mean, I</p> <p>23 don't need to know everything that everybody is</p> <p>24 doing at every moment in time in order to make an</p>
<p style="text-align: right;">Page 147</p> <p>1 consider was the regulatory environment, for</p> <p>2 example, of -- of the National Traffic Safety --</p> <p>3 NHTSA?</p> <p>4 A. In the Toyota case, I applied my</p> <p>5 expertise as an organization scientist --</p> <p>6 Q. Right.</p> <p>7 But you had to --</p> <p>8 A. -- to the matter at hand.</p> <p>9 Q. Right.</p> <p>10 And you had to consider the</p> <p>11 environment in which the company was operating.</p> <p>12 True?</p> <p>13 A. I -- I -- my analysis was a little</p> <p>14 different in that case.</p> <p>15 Q. Okay. So it's irrelevant to you?</p> <p>16 A. No, it is not irrelevant.</p> <p>17 Q. Okay.</p> <p>18 A. Because I know exactly what Toyota</p> <p>19 did.</p> <p>20 Q. Okay. So is -- maybe I'll phrase it</p> <p>21 a different way.</p> <p>22 Is it relative to you in terms of</p> <p>23 looking at organizational behavior the regulatory</p> <p>24 environment in which you're operating?</p>	<p style="text-align: right;">Page 149</p> <p>1 organizational assessment of organization</p> <p>2 behavior, which is what I've done.</p> <p>3 Q. I didn't ask that question. So I'll</p> <p>4 respectfully -- I will try to let you finish your</p> <p>5 answers if you actually try to answer my question.</p> <p>6 Do we have a deal?</p> <p>7 A. I have been answering your questions</p> <p>8 all morning.</p> <p>9 MR. EWALD: She's answering.</p> <p>10 BY MR. TISI:</p> <p>11 Q. Okay. My question is this: Is it</p> <p>12 relevant or is it not relevant the regulatory</p> <p>13 environment in which a company is operating when</p> <p>14 you do your work?</p> <p>15 MR. EWALD: Objection to form.</p> <p>16 THE WITNESS: I mean, do</p> <p>17 companies follow regulations whatever? I</p> <p>18 mean, it would depend. I mean --</p> <p>19 BY MR. TISI:</p> <p>20 Q. Okay.</p> <p>21 A. -- honestly, I'm trying to</p> <p>22 understand in this case whether J&J was taking its</p> <p>23 actions and the kinds of actions we would expect</p> <p>24 to see in a company that cared about the</p>

<p style="text-align: right;">Page 150</p> <p>1 well-being of its consumers.</p> <p>2 MR. TISI: Okay. Let's look</p> <p>3 at Exhibit 5. Maybe we can get a</p> <p>4 specific answer if we do it this way.</p> <p>5 (Document marked for</p> <p>6 identification as Sutcliffe Exhibit 5.)</p> <p>7 BY MR. TISI:</p> <p>8 Q. I'm going to show you Exhibit</p> <p>9 Number 5. The printout from the FDA website which</p> <p>10 talks about the relative responsibilities of a</p> <p>11 cosmetic company versus the FDA.</p> <p>12 A. Uh-huh.</p> <p>13 Q. I'm going to ask whether or not it's</p> <p>14 either relevant or not relevant and whether you</p> <p>15 know it or you don't know it.</p> <p>16 Okay?</p> <p>17 A. Relevant to what?</p> <p>18 Q. Your opinions. Okay? So let me --</p> <p>19 let's talk about it.</p> <p>20 It says -- on the very first page,</p> <p>21 it says -- first paragraph, it says:</p> <p>22 The FDA does not -- does not require</p> <p>23 cosmetic products and ingredients to have FDA</p> <p>24 approval.</p>	<p style="text-align: right;">Page 152</p> <p>1 safety and labeling of cosmetics?"</p> <p>2 Bullet point number 1 talks about</p> <p>3 adulteration.</p> <p>4 Do you see "adulteration"? The word</p> <p>5 "adulterated"?</p> <p>6 A. I see that, yes.</p> <p>7 Q. It says:</p> <p>8 "A cosmetic is adulterated if 'it</p> <p>9 bears or contains any poisonous or deleterious</p> <p>10 substance which may render it injurious to users</p> <p>11 under the conditions of use prescribed in the</p> <p>12 labeling thereof, or under conditions of use as</p> <p>13 are customary and usual.'"</p> <p>14 Do you see that?</p> <p>15 A. I see that.</p> <p>16 Q. First of all, you would agree with</p> <p>17 me, even though you're not an expert in asbestos,</p> <p>18 asbestos is a dangerous subject -- substance,</p> <p>19 correct?</p> <p>20 A. Asbestos is harmful.</p> <p>21 Q. Right.</p> <p>22 It may be harmful and you -- no</p> <p>23 question about that, right?</p> <p>24 A. I think that's been borne out.</p>
<p style="text-align: right;">Page 151</p> <p>1 Is that important or not important</p> <p>2 to you?</p> <p>3 A. It just -- it's not -- I mean, I</p> <p>4 can't say that it's important or not important. I</p> <p>5 mean, it is what it is here.</p> <p>6 Q. Okay.</p> <p>7 A. It says:</p> <p>8 "The law does not require cosmetic</p> <p>9 products and ingredients, other than color</p> <p>10 additives, to have FDA approval before they go on</p> <p>11 the market."</p> <p>12 Q. So it means that the company has</p> <p>13 sole responsibility for the safety of its product,</p> <p>14 correct?</p> <p>15 MR. EWALD: Objection to form.</p> <p>16 THE WITNESS: The company</p> <p>17 is -- is tasked as -- the company is</p> <p>18 making a product.</p> <p>19 BY MR. TISI:</p> <p>20 Q. Okay.</p> <p>21 A. They have to think about, you know,</p> <p>22 they have to think about those matters.</p> <p>23 Q. Okay. Next page it says:</p> <p>24 "What does the law say about the</p>	<p style="text-align: right;">Page 153</p> <p>1 Q. And if there's asbestos in the</p> <p>2 product, you would even agree that it would be</p> <p>3 adulterated, correct?</p> <p>4 MR. EWALD: Objection to form</p> <p>5 and calls for legal conclusion.</p> <p>6 THE WITNESS: And I -- I</p> <p>7 can't say. I mean, adulterated is a</p> <p>8 pretty big word. I can't say yes or no.</p> <p>9 I don't know specifically what</p> <p>10 constitutes adulterated.</p> <p>11 BY MR. TISI:</p> <p>12 Q. Okay.</p> <p>13 A. But I understand what you're saying.</p> <p>14 Q. Okay. Next thing, next page, it</p> <p>15 says:</p> <p>16 "Under the Food, Drug, and Cosmetic</p> <p>17 Act, a product also may be misbranded."</p> <p>18 A. Where is this?</p> <p>19 Q. Next page. Under the last bullet</p> <p>20 point, it says:</p> <p>21 "Under the Food, Drug, and Cosmetic</p> <p>22 Act."</p> <p>23 A. I'm -- I'm not on the same page.</p> <p>24 Okay.</p>

<p style="text-align: right;">Page 154</p> <p>1 Q. It says:</p> <p>2 "A product also may be misbranded</p> <p>3 due to failure to provide material facts. This</p> <p>4 means, for example, any directions for safe use</p> <p>5 and warning statements needed to ensure a</p> <p>6 product's safe use."</p> <p>7 Do you see that?</p> <p>8 A. I see what's written there.</p> <p>9 Q. Do you know whether or not the</p> <p>10 company has the ability to voluntarily add warning</p> <p>11 instructions to a cosmetic?</p> <p>12 A. I have -- I am not a regulatory</p> <p>13 expert and I am not -- I have not studied</p> <p>14 warnings.</p> <p>15 Q. It says -- you know, this is the</p> <p>16 part I really want to talk about it. It says:</p> <p>17 "Who is responsible for</p> <p>18 substantiating the safety of cosmetics?"</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. It says:</p> <p>22 "Companies and individuals who</p> <p>23 manufacture or market cosmetics have a legal</p> <p>24 responsibility to ensure the safety of their</p>	<p style="text-align: right;">Page 156</p> <p>1 you know, the FD -- the FDA doesn't have premarket</p> <p>2 approval. I get that but --</p> <p>3 Q. That's not what --</p> <p>4 A. -- that doesn't mean that the FDA</p> <p>5 doesn't have -- that it's toothless.</p> <p>6 Q. But that's not what -- that's not --</p> <p>7 that's actually not what I'm asking. This</p> <p>8 question has nothing to do with the FDA.</p> <p>9 The question is:</p> <p>10 "Companies and individuals who</p> <p>11 manufacture or market cosmetics have a legal</p> <p>12 responsibility to ensure the safety of its</p> <p>13 products."</p> <p>14 That's what it says. True?</p> <p>15 A. I see what it says.</p> <p>16 Q. Okay. And the company has a</p> <p>17 responsibility to ensure the safety of the</p> <p>18 product. True?</p> <p>19 A. It says:</p> <p>20 "Companies and individuals who</p> <p>21 manufacture or market cosmetics have a legal</p> <p>22 responsibility to ensure the safety of their</p> <p>23 products."</p> <p>24 Q. Was that your understanding when you</p>
<p style="text-align: right;">Page 155</p> <p>1 products."</p> <p>2 Do you see that?</p> <p>3 A. I see that.</p> <p>4 Q. Okay. Do you understand that to be</p> <p>5 the case? Did you assume that when you were doing</p> <p>6 your analysis of safety?</p> <p>7 A. I understand that. I tried to</p> <p>8 understand, and what I've done is whether or not</p> <p>9 J -- you know, whether or not the kinds of actions</p> <p>10 J&J was taking to assure the safety of its</p> <p>11 product.</p> <p>12 Q. Well, it uses the word "ensure."</p> <p>13 Do you see that? "Ensure the</p> <p>14 safety."</p> <p>15 A. Where are you talking about?</p> <p>16 Q. It says:</p> <p>17 "Companies and individuals who</p> <p>18 manufacture or market cosmetics have a legal</p> <p>19 responsibility to ensure the safety of their</p> <p>20 products."</p> <p>21 A. I see what it says.</p> <p>22 Q. Okay. Is that your understanding?</p> <p>23 A. I see what it says.</p> <p>24 I think what you're saying is that,</p>	<p style="text-align: right;">Page 157</p> <p>1 actually did your review?</p> <p>2 A. I have to say, I have not looked at</p> <p>3 this before I did my review. I understand that</p> <p>4 the company is responsible for assuring the safety</p> <p>5 of its product, and that's the kind of thing that</p> <p>6 I was looking at.</p> <p>7 Q. Okay. And that's really important.</p> <p>8 Okay? Because the company has responsibility to</p> <p>9 ensure the safety of the product. True?</p> <p>10 A. What I have done in my analysis is</p> <p>11 to understand J&J, what they knew and when about</p> <p>12 the safety of its product, and whether or not the</p> <p>13 actions that they have taken to actively seek out</p> <p>14 scientific knowledge about the safety of its</p> <p>15 product, whether the actions it's taken are</p> <p>16 consistent with a company that cares about the</p> <p>17 well-being of its consumers. And I have done</p> <p>18 that.</p> <p>19 Q. Next sentence.</p> <p>20 I move to strike because it's not</p> <p>21 nonresponsive.</p> <p>22 Next sentence.</p> <p>23 "Neither the law nor FDA regulations</p> <p>24 require specific tests to demonstrate the safety</p>

<p style="text-align: right;">Page 158</p> <p>1 of individual products or ingredients." 2 Do you see that? 3 A. I see that. 4 Q. Did you understand that to be the 5 case that the company could adopt whatever test it 6 wanted to ensure the safety of its product? 7 A. I -- 8 MR. EWALD: Objection to form. 9 THE WITNESS: I can't sit 10 here and say that one way or another. 11 BY MR. TISI: 12 Q. Okay. 13 A. I mean, I have not studied this. 14 Q. Is there any test -- and we'll talk 15 about this. 16 Is there any test that can ensure 17 there's absolutely 100 percent no asbestos in 18 talc? 19 A. I am not opining on the testing. 20 What I do know is that J&J, along 21 with others in the industry, along with the FDA, 22 proactively sought to develop testing in the 23 1970s. And I know that J&J additionally went 24 beyond the industry standard.</p>	<p style="text-align: right;">Page 160</p> <p>1 "FDA has consistently advised 2 manufacturers to use whatever testing is necessary 3 to ensure the safety of their products and 4 ingredients." 5 Correct? 6 A. I see that, you know. 7 Q. Okay. And you agree with that? 8 As a consumer, wouldn't you agree 9 with that? 10 That the company if a -- can I have 11 a bottle? 12 If I have a bottle of Coke Zero in 13 front of me, don't you as a consumer have the -- 14 MR. EWALD: Let the record 15 reflect there's a Coke Zero. 16 MR. TISI: A Coke Zero on the 17 table. 18 BY MR. TISI: 19 Q. That there's no sugar in this Coke? 20 No, absolutely zero sugar in this Coke Zero? 21 MR. EWALD: Objection to form. 22 THE WITNESS: I mean, I don't 23 really know. (Laugh). I mean, I would 24 hope so.</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. And J&J also knew that its test 2 could not guarantee that talc was 100 percent 3 asbestos-free. True? 4 A. Again, I am not opining. I'm not a 5 -- I'm not a -- 6 Q. Yeah. 7 A. -- microscopist or a toxicologist. 8 What I do know is that J&J adopted a 9 technique that went beyond the industry standard 10 to test its products over decades. 11 Q. You test -- in one of the very last 12 footnotes in one of your appendices -- and I'll 13 get it in a moment because it's a little bit out 14 of order of where I was going to go. 15 You acknowledge that there were 16 detection limits of the tests that they -- that 17 they -- that they employed. True? 18 A. Again, I -- I am not opining on 19 testing. I'm not a testing expert. 20 Q. Okay. 21 A. That is better left -- that question 22 is better left for somebody else. 23 Q. Next thing it says here -- we'll 24 talk about that. FDA. Next sentence.</p>	<p style="text-align: right;">Page 161</p> <p>1 BY MR. TISI: 2 Q. Okay. And if somebody is told that 3 it's a hundred percent free of asbestos, you would 4 agree with me that when somebody says it is -- 5 that when the company says talc is pure and has 6 zero asbestos, that they have the right to expect 7 that it has no or zero asbestos? 8 MR. EWALD: Objection to form. 9 Outside the scope. 10 Go ahead. 11 THE WITNESS: I, you know, I 12 mean, yeah, I hope that but -- 13 BY MR. TISI: 14 Q. Okay. 15 A. -- you know, I don't -- you're not 16 -- you're asking a question that is very ambiguous 17 and hypothetical. 18 Q. Okay. Well, you testified you have 19 about 60 -- 60 of your pages of your report talk 20 about asbestos, asbestos testing, and the results 21 of asbestos testing and the knowledge of the 22 asbestos testing. True? 23 A. In my report, I talk about 24 testing --</p>

<p style="text-align: right;">Page 162</p> <p>1 Q. Yeah.</p> <p>2 A. -- and how testing has -- has -- has</p> <p>3 actually contributed to the safety of the</p> <p>4 industry.</p> <p>5 Q. In all of the -- in all of your</p> <p>6 review, you've never seen that there is questions</p> <p>7 about whether or not talc can cause -- talc can</p> <p>8 contain asbestos?</p> <p>9 MR. EWALD: Objection to form.</p> <p>10 BY MR. TISI:</p> <p>11 Q. Even minute amounts.</p> <p>12 A. Again, you know, what I -- what I</p> <p>13 know is what J&J has been doing, and that is to</p> <p>14 test its product over decades, after having worked</p> <p>15 collaboratively with experts, with scientists,</p> <p>16 with the FDA --</p> <p>17 Q. Well --</p> <p>18 A. -- to develop methods to do that.</p> <p>19 Q. Good question. I'm glad you raised</p> <p>20 that.</p> <p>21 When did the company provide all the</p> <p>22 test results that it had done over time to the</p> <p>23 FDA? Did it provide it in realtime or did it</p> <p>24 provide it at the very end of the process?</p>	<p style="text-align: right;">Page 164</p> <p>1 A. -- and, frankly, I mean, in this</p> <p>2 case, I think the Credo provided a real basis for</p> <p>3 that.</p> <p>4 Q. And you've written about that.</p> <p>5 True?</p> <p>6 A. I've written about safety culture in</p> <p>7 the past.</p> <p>8 Q. And although you're not an expert in</p> <p>9 FDA regulations, you understand that it's not</p> <p>10 enough to just say you have a safety culture. You</p> <p>11 actually have to enact clear policies that carry</p> <p>12 out that safety culture. True?</p> <p>13 A. Actually, I don't agree with that.</p> <p>14 Q. Okay.</p> <p>15 A. I think that there are many ways to</p> <p>16 achieve a safety culture, and enacting policies is</p> <p>17 one, but that's not the only thing that</p> <p>18 organizations can do.</p> <p>19 Q. Well, let's talk about that because</p> <p>20 I have some questions based upon your literature.</p> <p>21 An organization must provide an</p> <p>22 infrastructure to implement?</p> <p>23 A. An infrastructure entails many</p> <p>24 things.</p>
<p style="text-align: right;">Page 163</p> <p>1 A. I have seen reports to the FDA. I</p> <p>2 don't -- I don't recall. No, I can't answer that.</p> <p>3 MR. EWALD: We've been going</p> <p>4 about an hour. Whenever it is a good</p> <p>5 stopping point, just let me know.</p> <p>6 MR. TISI: I know. Let me</p> <p>7 just --</p> <p>8 THE WITNESS: Are we done</p> <p>9 with this document?</p> <p>10 BY MR. TISI:</p> <p>11 Q. Yes, please.</p> <p>12 Let me -- let me go to the next</p> <p>13 section, if you don't mind, because then after</p> <p>14 that it will be a whole different thing.</p> <p>15 As an expert in organizational</p> <p>16 science, a different -- let's just talk about</p> <p>17 policies and procedures and all of that.</p> <p>18 As an expert in organizational</p> <p>19 science, do you agree that there must be a culture</p> <p>20 of safety, particularly in an industry like J&J</p> <p>21 where public safety is involved?</p> <p>22 A. I think that a strong safety culture</p> <p>23 is -- is a good thing to have --</p> <p>24 Q. You agree about that?</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. Okay. But -- but they need to have</p> <p>2 something more than just say, "We're a safe</p> <p>3 company."</p> <p>4 They have to do something to carry</p> <p>5 that out, correct?</p> <p>6 A. There, generally speaking, yes.</p> <p>7 Q. Okay. Oftentimes and with a highly</p> <p>8 regulated industry -- well, with a regulated</p> <p>9 industry, you would expect to see policies,</p> <p>10 procedures, SOPs. You talked about that before.</p> <p>11 That's typical, correct?</p> <p>12 A. I think having policies and</p> <p>13 procedures is pretty typical in most</p> <p>14 organizations.</p> <p>15 Q. And you should have a chain of</p> <p>16 command as to who's actually making these</p> <p>17 decisions and what powers they have, correct?</p> <p>18 A. You know, I mean, I don't see that</p> <p>19 as a -- as a prerequisite but, generally speaking,</p> <p>20 people have ideas of who they talk to.</p> <p>21 Q. All right. And companies need to be</p> <p>22 flexible in how they deal with safety and</p> <p>23 disruptive ambiguity, correct?</p> <p>24 MR. EWALD: Objection to form.</p>

<p style="text-align: right;">Page 166</p> <p>1 Vague.</p> <p>2 THE WITNESS: First of all, I</p> <p>3 mean, disruptive -- I'm sorry, I missed</p> <p>4 part of your question because it was</p> <p>5 combining several things.</p> <p>6 BY MR. TISI:</p> <p>7 Q. Companies have to be flexible in</p> <p>8 addressing issues raised by disruptive ambiguity.</p> <p>9 True?</p> <p>10 MR. EWALD: Objection to form.</p> <p>11 Vague.</p> <p>12 Go ahead.</p> <p>13 THE WITNESS: Well, I think</p> <p>14 that's an empirical question but</p> <p>15 flexibility I'm not -- adaptability,</p> <p>16 flexibility could be a good thing or, I</p> <p>17 mean, I think it depends.</p> <p>18 BY MR. TISI:</p> <p>19 Q. Well, you've written you can't be</p> <p>20 rigid. You have to be proactive in dealing with</p> <p>21 disruptive ambiguity. True?</p> <p>22 A. You're -- you're linking rigidity</p> <p>23 and proactivity, which doesn't truly make sense to</p> <p>24 me. I mean, the issue is, are we engaging with</p>	<p style="text-align: right;">Page 168</p> <p>1 I found actually to be pretty helpful. So I'm</p> <p>2 going to show it to you. Maybe we can talk</p> <p>3 through it.</p> <p>4 Okay?</p> <p>5 A. Maybe. I have not looked at that</p> <p>6 report for probably 10 years.</p> <p>7 Q. Well, I assume your -- I assume that</p> <p>8 your opinions don't just change depending upon the</p> <p>9 case in which you're involved. You have a</p> <p>10 standard methodology that you employ. True?</p> <p>11 A. That -- actually, I don't really</p> <p>12 understand what you said or whether I agree with</p> <p>13 it. You recall that --</p> <p>14 Q. Well, do you --</p> <p>15 A. -- I'm using different frameworks.</p> <p>16 Every -- every project is different --</p> <p>17 Q. Okay.</p> <p>18 A. -- and the same framework is not</p> <p>19 used in every project.</p> <p>20 Q. Well, let's see if this framework</p> <p>21 helps you. Your own framework from the Deepwater</p> <p>22 Horizon case.</p> <p>23 A. Sure. Yeah.</p> <p>24 MR. EWALD: Do you have one</p>
<p style="text-align: right;">Page 167</p> <p>1 the -- with -- with certain things or not.</p> <p>2 Q. Okay. Well, let's do a little</p> <p>3 sensemaking here. I'll make some sense. Okay?</p> <p>4 Issue arises. Okay? You would</p> <p>5 expect a company who is responsible for safety of</p> <p>6 a product to be -- to react and not be rigid in</p> <p>7 its looking at the issue. True?</p> <p>8 MR. EWALD: Objection. Form.</p> <p>9 Vague.</p> <p>10 THE WITNESS: I think it's</p> <p>11 more complicated than what you're saying,</p> <p>12 and that I think really you've got to</p> <p>13 think about the whole context. Because</p> <p>14 information is, you know, can be coming</p> <p>15 from multiple different directions and</p> <p>16 paying attention can vary across</p> <p>17 organizations. So I think it's more</p> <p>18 complicated than you make it.</p> <p>19 BY MR. TISI:</p> <p>20 Q. Well, you have had -- I pulled your</p> <p>21 expert report in the Deepwater Horizon case where</p> <p>22 you do actually talk about this question.</p> <p>23 A. Uh-huh.</p> <p>24 Q. And you put together a chart, which</p>	<p style="text-align: right;">Page 169</p> <p>1 more copy?</p> <p>2 MR. TISI: Oh, I'm sorry.</p> <p>3 MR. EWALD: Okay. Thank you.</p> <p>4 (Document marked for</p> <p>5 identification as Sutcliffe Exhibit 6.)</p> <p>6 BY MR. TISI:</p> <p>7 Q. On page 5 of your report, you talk</p> <p>8 about a safety culture and it says:</p> <p>9 "Within this framework" -- talking</p> <p>10 about the framework of your analysis in that case.</p> <p>11 A. Uh-huh.</p> <p>12 Q. You said:</p> <p>13 "A strong safety culture shares</p> <p>14 three elements: (1) it is enabled, meaning that</p> <p>15 the organization and its leaders emphasize safety</p> <p>16 and create a positive safety climate."</p> <p>17 Is that true then and is it true</p> <p>18 now?</p> <p>19 A. True.</p> <p>20 Q. Okay. Number 2. "It is enacted,</p> <p>21 meaning the members of the organization put the</p> <p>22 organization's safety policies and procedures into</p> <p>23 practice."</p> <p>24 A. Correct on that.</p>

<p style="text-align: right;">Page 170</p> <p>1 Q. Was that true then?</p> <p>2 A. It's true. It's -- it is what it</p> <p>3 says.</p> <p>4 Q. And it's true now?</p> <p>5 A. I believe that cultures are enabled,</p> <p>6 enacted, and elaborated.</p> <p>7 Q. And they must put the organization</p> <p>8 policies and procedures into practice, right?</p> <p>9 A. That's what I've written about, yes.</p> <p>10 Q. And that's true? It's your words,</p> <p>11 right?</p> <p>12 A. It's -- it's -- yes, and there are</p> <p>13 many different ways to do that.</p> <p>14 Q. Okay. Number 3. "It is elaborated,</p> <p>15 meaning that the organization rigorously reflects</p> <p>16 on its safety performance and seeks to improve its</p> <p>17 policies and procedures as a result."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. So that's an iterative process. You</p> <p>21 learn and you adapt, correct?</p> <p>22 A. It is an iterative process and</p> <p>23 that's the kind -- yes. Yes.</p> <p>24 Q. Okay. And on the next page, you</p>	<p style="text-align: right;">Page 172</p> <p>1 policies and procedures to create a safety</p> <p>2 infrastructure."</p> <p>3 Do you see that?</p> <p>4 A. Yes. As I wrote, "They invest in</p> <p>5 policies and procedures to create." I didn't say</p> <p>6 "must." You used "must." I think that added on.</p> <p>7 Q. Okay. Fine.</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 A. So just to make that clear.</p> <p>11 Q. So it's not just to prioritize</p> <p>12 safety, have a Credo.</p> <p>13 You actually have to invest in</p> <p>14 policies and procedures to create a safety</p> <p>15 infrastructure, correct?</p> <p>16 A. Yes, and that can be accomplished in</p> <p>17 multiple ways.</p> <p>18 Q. Okay. We'll talk about it.</p> <p>19 Okay. Number 4 it says:</p> <p>20 "Individuals perceive that leaders</p> <p>21 and the organization are committed to safety."</p> <p>22 Correct?</p> <p>23 A. I see that.</p> <p>24 Q. They need to know who the leaders</p>
<p style="text-align: right;">Page 171</p> <p>1 actually have a figure where you try to illustrate</p> <p>2 this issue.</p> <p>3 A. Uh-huh.</p> <p>4 Q. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. Enable, enact, and elaborate.</p> <p>7 A. Right.</p> <p>8 Q. True?</p> <p>9 A. Yes.</p> <p>10 Q. All right.</p> <p>11 A. And this is not exhaustive, just to</p> <p>12 remind you.</p> <p>13 Q. Oh, I'm -- there may be other</p> <p>14 things, but I'm -- I'm just going by your own</p> <p>15 words.</p> <p>16 A. Yes.</p> <p>17 Q. Okay. "Leaders and the organization</p> <p>18 prioritize safety. They invest in policies and</p> <p>19 procedures to create a safety infrastructure and</p> <p>20 take actions that reflect their commitment to</p> <p>21 safety."</p> <p>22 Do you see that?</p> <p>23 A. Yeah.</p> <p>24 Q. Okay. So they must "invest in</p>	<p style="text-align: right;">Page 173</p> <p>1 are. True?</p> <p>2 A. You know, there -- first of all,</p> <p>3 there I think about leaders as many leaders. It's</p> <p>4 at multiple levels in the organization. It</p> <p>5 doesn't have to be one single leader.</p> <p>6 Q. Right.</p> <p>7 But it can't be chaos either, right?</p> <p>8 You need to have people you who you know and say,</p> <p>9 "Look, I have a toxicology question. I'm going to</p> <p>10 go to Mr. Golomb here, who's a toxicologist. I</p> <p>11 have somebody a regulatory question. I need to go</p> <p>12 to Mr. Wright here, who's a regulatory person."</p> <p>13 You need to know who to go to,</p> <p>14 right?</p> <p>15 A. I mean, people develop their --</p> <p>16 their social networks in multiple ways. So I have</p> <p>17 to -- I mean, it would be nice if there were</p> <p>18 organizational charts but, you know, organizations</p> <p>19 don't always have those things.</p> <p>20 Q. Okay.</p> <p>21 A. And so people develop their social</p> <p>22 networks in multiple ways.</p> <p>23 Q. Okay. Number 2 is they must enact</p> <p>24 the policies and the procedures.</p>

<p style="text-align: right;">Page 174</p> <p>1 You see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. They need to "take</p> <p>4 preventative action to avoid problems and adaptive</p> <p>5 action to respond to problems as they unfold."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. They need to -- for example,</p> <p>9 they need to minimize risk. If disruptive</p> <p>10 ambiguity happens, they need to take action to</p> <p>11 minimize risk. True?</p> <p>12 A. That can be one thing --</p> <p>13 Q. Okay.</p> <p>14 A. -- but it's not -- it's not</p> <p>15 everything.</p> <p>16 Q. Okay. And the third thing it says</p> <p>17 you need to elaborate. You need to learn as you</p> <p>18 go along.</p> <p>19 "The organization seeks to improve</p> <p>20 its safety-related policies and procedures."</p> <p>21 Correct?</p> <p>22 A. That's what I've written in the</p> <p>23 past.</p> <p>24 Q. So it needs to -- you need to enable</p>	<p style="text-align: right;">Page 176</p> <p>1 consumers.</p> <p>2 Q. Well, I think you said "and how they</p> <p>3 respond to that information." I'm looking for the</p> <p>4 words you used, but I wrote them down. I think</p> <p>5 you said how they actually.</p> <p>6 A. The actions that they take --</p> <p>7 Q. Okay.</p> <p>8 A. -- in response to developing their</p> <p>9 institutionalized knowledge.</p> <p>10 Q. But the action --</p> <p>11 A. For example -- I can give you an</p> <p>12 example.</p> <p>13 Q. I don't really want an example. I</p> <p>14 want you to answer my questions.</p> <p>15 A. Okay.</p> <p>16 Q. So if a company takes actions,</p> <p>17 oftentimes actions are in a company like this you</p> <p>18 would expect there to be a policies and procedure</p> <p>19 that would describe what actions should be taken</p> <p>20 and when. True?</p> <p>21 MR. EWALD: I'm sorry. When</p> <p>22 you're talking about "this," you're</p> <p>23 talking about BP? J&J?</p> <p>24 MR. TISI: J&J.</p>
<p style="text-align: right;">Page 175</p> <p>1 a safety culture, have a defined set of procedures</p> <p>2 to follow --</p> <p>3 A. Uh-huh.</p> <p>4 Q. -- enact them, and then continue to</p> <p>5 elaborate on them over time. True?</p> <p>6 A. That's what the -- the process that</p> <p>7 I've outlined for safety culture, which of course,</p> <p>8 you know, in this case, I didn't -- I wasn't</p> <p>9 analyzing the safety culture.</p> <p>10 Q. Okay. So as part of your analysis,</p> <p>11 did you notice that there were clear guidelines in</p> <p>12 the '70s, '80s, '90s, and 2000s as to whether or</p> <p>13 not there were policies and procedures, for</p> <p>14 example, to analyze potential risks?</p> <p>15 A. My role in this -- in this case was</p> <p>16 different than my role in the BP case.</p> <p>17 I was not analyzing the safety</p> <p>18 culture of J&J over time.</p> <p>19 What I was doing is what I've said</p> <p>20 earlier is trying to understand what J&J knew and</p> <p>21 when about the potential safety -- safety of its</p> <p>22 product and whether or not their actions were</p> <p>23 consistent with what I would expect to see in a</p> <p>24 company that cared about the well-being of its</p>	<p style="text-align: right;">Page 177</p> <p>1 BY MR. TISI:</p> <p>2 Q. In a company like J&J, would you</p> <p>3 expect to see policies and procedures that would</p> <p>4 describe when, how, and who is to take action in</p> <p>5 response to a safety issue?</p> <p>6 A. I would have to say that just</p> <p>7 knowing how organizations develop policies and</p> <p>8 procedures over time is that, you know, it's a</p> <p>9 process.</p> <p>10 Q. Right.</p> <p>11 A. And that sometimes they're more</p> <p>12 detailed, sometimes they're not. And in this</p> <p>13 case, I was not studying the individual policies</p> <p>14 and procedures that J&J has. I've described</p> <p>15 several times what I -- what my role was here.</p> <p>16 Q. Well, but -- but one of the things</p> <p>17 you're -- you're going to opine by, if a judge</p> <p>18 lets you give any opinion whatsoever, is whether</p> <p>19 or not how a person -- how the company responded</p> <p>20 to issues of safety as they arise. True?</p> <p>21 A. Generally speaking, I'm not -- no,</p> <p>22 that's not an accurate characterization.</p> <p>23 Q. Okay.</p> <p>24 A. What I'm trying to understand is</p>

<p style="text-align: right;">Page 178</p> <p>1 what J&J knew and when, how is information coming 2 into the organization, how was it being 3 interpreted, and what actions were resulting from 4 that.</p> <p>5 Q. And the actions -- 6 A. With an example of -- 7 Q. I'm not asking you an example. 8 A. But I want to give you an example. 9 MR. EWALD: She -- 10 BY MR. TISI: 11 Q. Counsel will have an opportunity to 12 give you an example. Okay? 13 A. (Laugh). 14 Q. But -- but the actions that are 15 taken in a company are typically governed by 16 policies and procedures; is that not true? 17 MR. EWALD: Objection to form. 18 THE WITNESS: I mean, I'd 19 have to look at a specific case because 20 actions, you know, occur for a variety of 21 reasons which can be, you know, the 22 informal ideas about what -- what needs 23 to happen. 24 BY MR. TISI:</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. Right. 2 A. About how we expect people to act in 3 this organization. 4 Q. Right. 5 It's aspirational. I want to have a 6 good day, right? 7 A. I think it's more than aspirational. 8 Q. Okay. 9 A. It's a value statement. 10 Q. Okay. Value statement. 11 A. How are people -- I mean, very -- 12 it's -- in organizations, these kinds of 13 statements provide insight to people about how do 14 we act when nobody is looking. 15 Q. Okay. And so now my question is 16 this: Have you seen a single policy and procedure 17 in place at either Johnson & Johnson or Johnson & 18 Johnson Consumer companies -- it changed over 19 time -- which governed how to analyze a safety 20 question when the issue arises? 21 It's a yes or no question. 22 A. I was not studying that. I looked 23 at policies and procedures, but my role was 24 different.</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. All right. So let me -- let me see 2 if I can cut this. 3 A. You're trying to say that 4 organization, you know, that you have to have the 5 specific thing that says this thing. People 6 develop knowledge about how to act in 7 organizations through multiple ways. 8 Q. Companies need to be predictable in 9 the way in which they approach problems. True? 10 A. I -- I would have to think about 11 that. 12 Q. Okay. 13 A. I mean, I -- I don't know what -- 14 what that means, frankly. 15 Q. So, but let me just see if I can 16 wrap my head around this, and maybe I can 17 short-cut it by asking this question. 18 Other than the Credo, which is 19 aspirational, you would agree, right? 20 A. The Credo is a vision. It's a 21 vision, value -- 22 Q. A vision statement? 23 A. It's a vision statement. It's a 24 value statement. It's a normative statement.</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. Okay. My question was: Did you see 2 it? 3 A. I have to say, I don't recall what I 4 saw or didn't see. 5 Q. Okay. 6 A. I just -- 7 Q. So the answer would be -- 8 A. It was -- the answer is that's not 9 what I was doing here. 10 Q. Okay. But my answer is you 11 didn't -- my question is: Did you see it? 12 A. I don't -- I cannot recall. 13 Q. Well, in the back in Exhibit 16 -- 14 excuse me -- Exhibit 7, which I'm going to show 15 you. 16 A. Okay. 17 (Document marked for 18 identification as Sutcliffe Exhibit 7.) 19 BY MR. TISI: 20 Q. You have an appendix where you talk 21 about "Johnson & Johnson's Credo and 22 Organizational Policies and Procedures." 23 A. Right. Yeah. 24 Q. Exhibit Number 7.</p>

<p style="text-align: right;">Page 182</p> <p>1 A. Yeah.</p> <p>2 Q. All right. And it's entitled</p> <p>3 "Johnson & Johnson Credo and Organization Policies</p> <p>4 and Procedures," correct?</p> <p>5 A. Which is what I just said that I did</p> <p>6 review certain policies and procedures.</p> <p>7 Q. Actually, you said that wasn't your</p> <p>8 job.</p> <p>9 I'm trying to understand. I'm</p> <p>10 really trying to understand your --</p> <p>11 A. It's --</p> <p>12 Q. -- your opinions here. You have a</p> <p>13 whole section in the back of your thing. It says:</p> <p>14 "Organizational Policies and</p> <p>15 Procedures."</p> <p>16 A. Uh-huh.</p> <p>17 Q. Am I correct? So you did look at</p> <p>18 policies and procedures?</p> <p>19 A. I did.</p> <p>20 Q. Okay.</p> <p>21 A. I did look at the structure of the</p> <p>22 organization --</p> <p>23 Q. All right.</p> <p>24 A. -- but it was not the real focus of</p>	<p style="text-align: right;">Page 184</p> <p>1 MR. TISI: Then we'll stop.</p> <p>2 We'll stop.</p> <p>3 MR. EWALD: Off the record.</p> <p>4 (Recess: 11:45 a.m. -</p> <p>5 11:55 a.m.)</p> <p>6 BY MR. TISI:</p> <p>7 Q. I've handed you what I have had</p> <p>8 marked as Exhibit Number 8, and this is a consumer</p> <p>9 group policy and procedure, and it's entitled</p> <p>10 "Preparation of Safety Surveillance Reports For</p> <p>11 U.S. Marketed Products Monitored in the Remetrex</p> <p>12 Safety Program."</p> <p>13 Do you see that?</p> <p>14 A. I see it.</p> <p>15 Q. I assume you haven't seen this</p> <p>16 before. It wasn't on your reliance list, and I</p> <p>17 really am not going to ask you about the Remetrex</p> <p>18 Safety System or anything related to that.</p> <p>19 But let me ask you this: First of</p> <p>20 all, this does indicate that there are standard</p> <p>21 operating -- this is from 2010.</p> <p>22 Do you see down there it says</p> <p>23 approvals 2010? On the right-hand side, it says</p> <p>24 "Date/Time 2010"?</p>
<p style="text-align: right;">Page 183</p> <p>1 my -- of my work.</p> <p>2 Q. All right. So, now my question is:</p> <p>3 Having looked at it, have you ever seen a policy</p> <p>4 and procedure that would govern risk mitigation in</p> <p>5 the event a safety signal arises?</p> <p>6 MR. EWALD: Objection to form.</p> <p>7 Go ahead.</p> <p>8 THE WITNESS: Again, I don't</p> <p>9 recall specifically.</p> <p>10 BY MR. TISI:</p> <p>11 Q. That's fair.</p> <p>12 A. I do not recall.</p> <p>13 MR. TISI: That's fair.</p> <p>14 Did you ever see a -- let me</p> <p>15 give you an example of a safety -- of a</p> <p>16 policy and procedure that we do have for</p> <p>17 a Johnson & Johnson Consumer, Exhibit</p> <p>18 Number 8.</p> <p>19 (Document marked for</p> <p>20 identification as Sutcliffe Exhibit 8.)</p> <p>21 BY MR. TISI:</p> <p>22 Q. And this one deals --</p> <p>23 MR. EWALD: Before you go,</p> <p>24 we've been going an hour and 20 minutes.</p>	<p style="text-align: right;">Page 185</p> <p>1 A. Ah.</p> <p>2 Q. Bottom. The chart on the bottom on</p> <p>3 the right-hand side.</p> <p>4 A. Oh, right there. Okay.</p> <p>5 Q. You see it?</p> <p>6 A. I see somebody approved it.</p> <p>7 Q. In 2010?</p> <p>8 A. Uh-huh.</p> <p>9 Q. So, first of all, this does indicate</p> <p>10 that there were policies and procedures at J&J?</p> <p>11 A. I think that I said there are</p> <p>12 policies and procedures at J&J.</p> <p>13 Q. I understand. I understand that.</p> <p>14 A. Yeah.</p> <p>15 Q. My question is: I have never seen</p> <p>16 one dealing with risk mitigation or risk</p> <p>17 assessment.</p> <p>18 Have you?</p> <p>19 A. I -- I can't say that I have or that</p> <p>20 I haven't. I don't remember.</p> <p>21 Q. Okay. Next page is a -- actually,</p> <p>22 on page 4 of the document.</p> <p>23 A. 4 of which document?</p> <p>24 Q. It's the one that says "Roles and</p>

<p style="text-align: right;">Page 186</p> <p>1 Responsibilities." This one here. (Indicates).</p> <p>2 A. You want me to --</p> <p>3 Q. It's page 2.</p> <p>4 A. -- to take a look at this? I'm</p> <p>5 going to need to read this.</p> <p>6 Q. You can. I'm not going to ask you</p> <p>7 about the policy. I'm just going to ask you about</p> <p>8 -- if you need to, I will give it to you.</p> <p>9 But let me ask you this: It says</p> <p>10 there is a Global Safety Review group</p> <p>11 "cross-functional team that provides an</p> <p>12 organizational focus and information exchange for</p> <p>13 departments involved in signal detection, risk</p> <p>14 management, mitigation, and monitoring."</p> <p>15 Do you see that?</p> <p>16 A. I see it.</p> <p>17 Q. Okay. Have you ever seen a Global</p> <p>18 Safety Review group dealing with talc?</p> <p>19 A. I did not examine the specific --</p> <p>20 Q. So you don't know who --</p> <p>21 A. -- the specifics. So I cannot say</p> <p>22 one way or another.</p> <p>23 Q. Next one says:</p> <p>24 "Medical Safety Officer: Physician</p>	<p style="text-align: right;">Page 188</p> <p>1 You do not know who was in the</p> <p>2 Office of Toxicology at any time in the past five</p> <p>3 decades with respect to your review of policies</p> <p>4 and procedures with respect to safety of talc?</p> <p>5 A. I don't know, but I would -- I would</p> <p>6 say that, you know, it's important to -- to keep</p> <p>7 in mind that, you know, structures, organization</p> <p>8 designs change over time. That oftentimes the</p> <p>9 policies are not necessarily written down and then</p> <p>10 the organization learns, and all of a sudden they</p> <p>11 realize, you know, "We need to codify our</p> <p>12 policies," but they have been acting in particular</p> <p>13 ways.</p> <p>14 So I think it's important to know</p> <p>15 that -- that designs change over time.</p> <p>16 Q. I don't honestly -- first of all,</p> <p>17 I'm going to move to strike because that was not</p> <p>18 in any way responsive to my question.</p> <p>19 But since you raise this issue,</p> <p>20 Johnson & Johnson is a huge pharmaceutical company</p> <p>21 with different divisions, correct?</p> <p>22 A. It is a multidivisional company,</p> <p>23 correct.</p> <p>24 Q. It's -- it's a half a trillion</p>
<p style="text-align: right;">Page 187</p> <p>1 responsible for leading and overseeing signal</p> <p>2 evaluation and risk management."</p> <p>3 Do you see that?</p> <p>4 A. I see that.</p> <p>5 Q. Do you know who was responsible for</p> <p>6 risk management at any time during the point</p> <p>7 during the time that you were reviewing the</p> <p>8 company's responsibilities in dealing with safety</p> <p>9 and risk?</p> <p>10 A. I was not studying the risk</p> <p>11 management structure of the organization.</p> <p>12 Q. So the --</p> <p>13 A. So I can't say one way or another</p> <p>14 who it was.</p> <p>15 Q. But the answer is, as you sit here</p> <p>16 today, you do not know at any point in time who</p> <p>17 was responsible at J&J for risk management?</p> <p>18 A. I did not study who was responsible.</p> <p>19 I don't know the structure, and I can't say who</p> <p>20 was or wasn't responsible.</p> <p>21 Q. So the answer is you don't know?</p> <p>22 A. I do not know.</p> <p>23 Q. Okay. Third one is Office of</p> <p>24 Toxicology.</p>	<p style="text-align: right;">Page 189</p> <p>1 dollar company. True?</p> <p>2 A. I don't know what their worth is --</p> <p>3 worth is.</p> <p>4 Q. Would you expect, as somebody who</p> <p>5 studies organizations, policies and procedures</p> <p>6 that would discuss things like risk management or</p> <p>7 risk assessment for a company like this?</p> <p>8 Would you expect it?</p> <p>9 A. I would expect that the organization</p> <p>10 has policies and procedures that cover lots of</p> <p>11 things.</p> <p>12 Q. Would you expect them to -- to -- of</p> <p>13 all things, you know they provide pharmaceuticals,</p> <p>14 medical devices, and consumer products that we in</p> <p>15 our everyday lives rely on. True?</p> <p>16 A. They -- they -- yes, they produce a</p> <p>17 lot of products.</p> <p>18 Q. As somebody who is an organizational</p> <p>19 expert, you would expect a company of this</p> <p>20 sophistication and this size to have clear</p> <p>21 policies and procedures as to who was responsible</p> <p>22 for risk assessment and risk mitigation.</p> <p>23 True or not true?</p> <p>24 A. I, you know, I can't say true or not</p>

<p style="text-align: right;">Page 190</p> <p>1 true because there are many ways to organize. 2 There is equifinality, many ways to the same end, 3 and I have not studied this. And so I can't say 4 unequivocally that there should be one thing or 5 another thing. There are many ways to go. 6 Q. I didn't say unequivocally. 7 I said you would expect that to be 8 true? 9 A. I would expect that, you know, the 10 organization would have policies and procedures 11 covering certain things and, you know, I have not 12 -- that's all I can say. 13 Q. And you have not seen a single 14 policy and procedure that covers risk assessment 15 or risk management. 16 Is that true or not true? 17 A. I can't say that I have or I haven't 18 because I do -- 19 Q. Okay. 20 A. -- I do not recall. 21 Q. As you sit here today, can you 22 recall a single policy and procedure that involves 23 risk assessment or risk -- risk management? Can 24 you sit here? Do you know of any of them?</p>	<p style="text-align: right;">Page 192</p> <p>1 that, you know, I said I wasn't asked to opine 2 about culture. So. 3 Q. There's no question pending, ma'am. 4 A. Okay. 5 Q. Thank you. 6 MR. EWALD: Did you mean 7 or 7 did you mean another one? 8 BY MR. TISI: 9 Q. Well, actually, in paragraph number 10 11 on Number 7, you mention that in 2013, J&J 11 corporate established the Office of Chief Medical 12 Officer. 13 Do you see that? 14 A. Yes, I see that. 15 Q. Okay. And I'm going to mark as 16 Exhibit Number 9, which is the SOP that deals with 17 -- 18 A. So this? 19 Q. First of all, let me, before you go 20 any further. 21 You also know the Credo requires a 22 company to take responsibility when it makes 23 mistakes, right? You say -- you saw that? 24 A. I have to say, I don't recall</p>
<p style="text-align: right;">Page 191</p> <p>1 A. I think I just answered that 2 question. 3 Q. No, I'm saying you couldn't answer 4 whether you've seen one. 5 As you sit here today, can you tell 6 me of a single one? 7 A. I can't say that I have or I haven't 8 because I don't recall. 9 Q. Okay. You don't recall. 10 And as you sit here -- because this 11 is my only chance to actually ask you questions. 12 Okay? 13 As you sit here today, you can't 14 recall any, can you? 15 A. I -- I have to say, I can't recall 16 seeing. I can't recall not seeing. So I can't 17 say. 18 Q. All right. Let's go to Exhibit 19 Number 7, if you don't mind. 20 A. Number 7? 21 Q. Let's talk about J&J. 22 A. Okay. Number 7? 23 Q. I'm sorry. 24 A. Because I note on the first page</p>	<p style="text-align: right;">Page 193</p> <p>1 specifically. 2 Q. Let's move on. 3 A. Okay. 4 Q. So let's kind of switch gears a 5 little bit. 6 Have you been able to determine 7 whether there's an SOP or not the criteria applied 8 by J&J at any time to determine when to replace or 9 take risk mitigation with respect to any of its 10 consumer products? 11 MR. EWALD: Objection to form. 12 THE WITNESS: I thought I -- 13 I thought I responded that I wasn't 14 analyzing all of the policies and 15 procedures at J&J. 16 BY MR. TISI: 17 Q. I didn't ask you about policies and 18 procedures. 19 I asked you -- you said it could 20 come from several sources and that it's not 21 necessary to have policies and procedures. 22 Now, I'm broadening it to say: Have 23 you seen any evidence from anything that says what 24 standard J&J applied to analyzing risk mitigation</p>

<p style="text-align: right;">Page 194</p> <p>1 in the context of a consumer product --</p> <p>2 A. I was not --</p> <p>3 Q. -- and its safety?</p> <p>4 A. I was not studying that.</p> <p>5 Q. Okay.</p> <p>6 A. I was studying other things.</p> <p>7 Q. Okay. Are you familiar -- you've</p> <p>8 actually written about -- what's called</p> <p>9 precautionary principle?</p> <p>10 A. I -- I have never labeled everything</p> <p>11 a precautionary principle. So, no, I am not</p> <p>12 familiar with what you're talking about.</p> <p>13 Q. You don't know what precautionary</p> <p>14 principle is?</p> <p>15 A. No.</p> <p>16 MR. TISI: Okay. Can I have</p> <p>17 Exhibit Number 18.</p> <p>18 I'm sorry. Exhibit Number 10.</p> <p>19 This is Exhibit Number 10. I'm sorry. I</p> <p>20 meant to say Number 10.</p> <p>21 (Document marked for</p> <p>22 identification as Sutcliffe Exhibit 10.)</p> <p>23 BY MR. TISI:</p> <p>24 Q. I'm going to show you Exhibit</p>	<p style="text-align: right;">Page 196</p> <p>1 among other people, a Dr. R. Fuller.</p> <p>2 Do you see that?</p> <p>3 A. Yes, as well as the other two.</p> <p>4 Q. Okay. On page, the last, page 3 of</p> <p>5 the memo to file.</p> <p>6 A. Uh-huh.</p> <p>7 Q. Third paragraph down it says:</p> <p>8 "Dr. Fuller stressed Johnson &</p> <p>9 Johnson's policy of full cooperation with FDA and</p> <p>10 that if the results of any scientific studies show</p> <p>11 any question of safety of talc, Johnson & Johnson</p> <p>12 will not hesitate to take it off the market."</p> <p>13 Do you see that?</p> <p>14 A. I see that.</p> <p>15 Q. Is that your understanding of what</p> <p>16 J&J's, when you were doing your review, the metric</p> <p>17 that they applied to looking at the questions of</p> <p>18 safety and talc?</p> <p>19 A. Number one, I wasn't -- I see what's</p> <p>20 written here. I wasn't studying. I mean, I was</p> <p>21 taking a broader view --</p> <p>22 Q. All right.</p> <p>23 A. -- with respect to --</p> <p>24 Q. Well, how --</p>
<p style="text-align: right;">Page 195</p> <p>1 Number 10.</p> <p>2 MR. EWALD: So he knows what</p> <p>3 you wanted when you get the wrong number?</p> <p>4 MR. TISI: I did. He does.</p> <p>5 MR. EWALD: (Laugh).</p> <p>6 MR. TISI: Because we had</p> <p>7 initial -- we actually had an initial</p> <p>8 number and then we had a change number.</p> <p>9 MR. EWALD: (Laugh).</p> <p>10 MR. TISI: I'm not easy.</p> <p>11 BY MR. TISI:</p> <p>12 Q. This is Exhibit Number 10.</p> <p>13 Do you see that?</p> <p>14 A. I see it, yes.</p> <p>15 Q. Okay.</p> <p>16 A. I need to take a look at it.</p> <p>17 Q. This is a -- I'm just going to ask</p> <p>18 you about one statement in here.</p> <p>19 This is a meeting with Commissioner</p> <p>20 Schmidt at FDA on January 16, 1974 called</p> <p>21 "Talc/Asbestos" and it's a memo to the file.</p> <p>22 Do you see that?</p> <p>23 A. Yes, I see that.</p> <p>24 Q. Okay. And speaking for J&J is,</p>	<p style="text-align: right;">Page 197</p> <p>1 MR. EWALD: Hold on.</p> <p>2 Go ahead.</p> <p>3 THE WITNESS: -- with respect</p> <p>4 to what J&J knew and when about the</p> <p>5 safety of its product and what it was and</p> <p>6 whether or not its actions are consistent</p> <p>7 with a company that cared about the</p> <p>8 well-being of its consumers.</p> <p>9 BY MR. TISI:</p> <p>10 Q. Well, its actions are consistent.</p> <p>11 What metric did you apply to whether its actions</p> <p>12 were consistent? Okay?</p> <p>13 I mean, this is a metric here. This</p> <p>14 is, "If there's a question about safety, we will</p> <p>15 not hesitate to take it off the market."</p> <p>16 That's a -- that's a metric of some</p> <p>17 fashion, correct?</p> <p>18 A. I am studying J&J's pursuit of</p> <p>19 scientific knowledge about the safety of its</p> <p>20 product and whether or not its actions are</p> <p>21 consistent with a company that cares about the</p> <p>22 well-being of its customers. And I used a</p> <p>23 scientific methodology, qualitative analysis, with</p> <p>24 a particular framework, sensemaking framework, to</p>

<p style="text-align: right;">Page 198</p> <p>1 understand whether or not J&J was taking actions 2 that are consistent with what we would expect to 3 see. 4 Q. Did J&J take actions in this case 5 consistent with what is said by Dr. Fuller here, 6 that is, "If there is any question of the safety 7 of talc, Johnson & Johnson will not hesitate to 8 take it off the market"? Is that -- did J&J act 9 with that -- consistent with that statement? 10 A. What I saw in my analysis is that no 11 one at J&J -- in my review of thousands of pages 12 of documents, I never saw anything that suggested 13 that anyone at J&J thought it would be okay to 14 expose consumers to asbestos. 15 Q. Okay. How about expose consumers to 16 a product which was associated with the risk of 17 ovarian cancer? 18 A. Or I would say the same thing. 19 Q. Okay. 20 A. That J&J was paying attention. 21 Q. But paying attention is one thing. 22 Okay? Doing something about it is something else. 23 This is a metric. Dr. Fuller says 24 "If there is any scientific study that shows any</p>	<p style="text-align: right;">Page 200</p> <p>1 incident. 2 What I'm asking you is -- 3 MR. TISI: Can you please read 4 back the question, please. 5 (The reporter read the record 6 on page 199 lines 23-24.) 7 THE WITNESS: And that's what 8 I'm saying. I'm not looking at any 9 single decision. 10 BY MR. TISI: 11 Q. I'm not asking you about -- I 12 said -- you're really not answering my questions, 13 ma'am, with all due respect. 14 MR. EWALD: I disagree. Go 15 ahead. 16 BY MR. TISI: 17 Q. Okay. I asked you the question: Is 18 it important to your opinions as to how J&J makes 19 decisions? 20 I'm not asking about a specific 21 decision. I'm asking you: Is it important to 22 understand how they make decisions? 23 A. I am not studying J&J's necessarily 24 decision processes.</p>
<p style="text-align: right;">Page 199</p> <p>1 question of the safety of talc, Johnson & Johnson 2 will not hesitate to take it off the market." 3 Using that metric. 4 A. I see what's being said there. 5 Q. Okay. 6 A. And in my estimation, J&J was acting 7 consistent with -- with -- with what -- 8 Q. That metric. 9 A. -- we're seeing. 10 Q. That metric. 11 A. Number one, I have not studied the 12 metric, and I am not thinking in metric ways. 13 I have just answered the question 14 that I think J&J was acting consistently with what 15 we'd expect to see from a company that cared. 16 MR. TISI: Can I have Exhibit 17 Number 19. 18 BY MR. TISI: 19 Q. Is it important to you how J&J 20 actually makes decisions in your framework? 21 A. I have not studied specific 22 decision-making. I studied a broad range of 23 evidence, and I'm not looking at any one incident. 24 Q. I know. I'm not asking any one</p>	<p style="text-align: right;">Page 201</p> <p>1 Q. Okay. So it's not important? 2 A. I -- 3 MR. EWALD: Objection to form. 4 THE WITNESS: I'm not saying 5 that it's important or not important. 6 I'm saying I did not study that. 7 BY MR. TISI: 8 Q. Is it important to understand how 9 J&J responded to -- to issues of safety to 10 understand how they make their decisions? 11 A. I am not studying how J&J made 12 particular decisions. I am studying over time 13 their pattern of actions related to seeking 14 knowledge, scientific knowledge, to understand the 15 safety of its products and what they did with 16 that. 17 MR. TISI: Here is Exhibit 18 Number 11. 19 (Document marked for 20 identification as Sutcliffe Exhibit 11.) 21 BY MR. TISI: 22 Q. Now, we looked at 1994 what 23 Dr. Fuller said. Let's look at what they're 24 saying in 2010. This is a Product Stewardship.</p>

<p style="text-align: right;">Page 202</p> <p>1 First of all, do you know whether</p> <p>2 J&J had a Product Stewardship section?</p> <p>3 A. I do not, no.</p> <p>4 Q. You don't know. You don't know what</p> <p>5 they did, do you?</p> <p>6 A. I don't know, no.</p> <p>7 Q. On page 6, it says -- there's a</p> <p>8 slide that says "How We Make Decisions."</p> <p>9 Do you see that?</p> <p>10 A. I see on page 2 in the agenda "How</p> <p>11 We Make Decisions."</p> <p>12 Okay.</p> <p>13 Q. Okay. You see where it says --</p> <p>14 A. Uh-huh.</p> <p>15 Q. You see that -- do you see on page 6</p> <p>16 it says:</p> <p>17 "First, we examine the opinions of</p> <p>18 regulatory and scientific bodies. By following</p> <p>19 the EU Directive WW, we are embracing the</p> <p>20 precautionary approach as laid out by the EU</p> <p>21 regulatory framework."</p> <p>22 Do you know what that precautionary</p> <p>23 approach is?</p> <p>24 A. I am not studying this. I have not</p>	<p style="text-align: right;">Page 204</p> <p>1 Mischaracterizes testimony.</p> <p>2 THE WITNESS: I don't -- I</p> <p>3 don't know that I agreed with that.</p> <p>4 I know that there has been</p> <p>5 disruptive ambiguity. I don't know</p> <p>6 whether it's been a safety concern. I</p> <p>7 know that there have been --</p> <p>8 BY MR. TISI:</p> <p>9 Q. Okay.</p> <p>10 A. There have been issues.</p> <p>11 Q. All right. Well, let's see if we</p> <p>12 can talk about that.</p> <p>13 There is disruptive ambiguity and I</p> <p>14 think we agreed that that disruptive ambiguity has</p> <p>15 existed over time in the decades leading up to</p> <p>16 today. True?</p> <p>17 A. I would say that there have been</p> <p>18 periods where there have been -- where there have</p> <p>19 been long periods where there has not been</p> <p>20 disruptive ambiguity, where there has been</p> <p>21 stability, where -- where things have -- have been</p> <p>22 relatively stable.</p> <p>23 Q. What period is that where there's</p> <p>24 been no concern about talc?</p>
<p style="text-align: right;">Page 203</p> <p>1 studied this, no.</p> <p>2 Q. Okay. Next sentence.</p> <p>3 "How We Make Decisions."</p> <p>4 Do you see that?</p> <p>5 A. I see it.</p> <p>6 Q. Okay. And there is something in</p> <p>7 red.</p> <p>8 Do you see that, or is it not -- did</p> <p>9 that not come through on the copy?</p> <p>10 A. I -- I see the -- I see what it</p> <p>11 says.</p> <p>12 Q. Okay. Of all things, it says -- it</p> <p>13 says we look at emerging -- at the bottom it says:</p> <p>14 "We look at emerging data and</p> <p>15 trends" and "If there is a safety concern, we exit</p> <p>16 the material."</p> <p>17 Do you see that?</p> <p>18 A. I see what's written there. I can't</p> <p>19 comment on what that means. I haven't studied it,</p> <p>20 and I don't know what it means.</p> <p>21 Q. But we agreed, did we not, that over</p> <p>22 the course of 50 years there has always been a</p> <p>23 safety concern about talc, right?</p> <p>24 MR. EWALD: Objection to form.</p>	<p style="text-align: right;">Page 205</p> <p>1 A. I would say between -- I mean, I</p> <p>2 don't know that I could say for sure, but after</p> <p>3 the, you know, after the disruptive ambiguities of</p> <p>4 the 1970s, early on I think that there was -- it</p> <p>5 was pretty stable once the multilevels of testing</p> <p>6 had been established at J&J that things went --</p> <p>7 went along.</p> <p>8 Q. Okay. And then there ever come a</p> <p>9 time where disruptive ambiguity picked up again?</p> <p>10 A. You know, I haven't been thinking --</p> <p>11 I can't sit here and answer because I haven't</p> <p>12 thought about it that way.</p> <p>13 Q. All right. Could you turn to page</p> <p>14 150 -- excuse me -- to paragraph 157 of your</p> <p>15 report.</p> <p>16 A. Uh-huh. Yep.</p> <p>17 Q. And it says:</p> <p>18 "J&J continued to follow this</p> <p>19 research over decades."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 MR. GOLOMB: "Closely follow."</p> <p>23 MR. TISI: Oh, appreciate</p> <p>24 that.</p>

<p style="text-align: right;">Page 206</p> <p>1 BY MR. TISI:</p> <p>2 Q. "Closely follow this research over</p> <p>3 decades."</p> <p>4 And you mentioned IARC, NTP and the</p> <p>5 1995 FDA workshop, and Health Canada in 2019.</p> <p>6 Do you see that?</p> <p>7 MR. EWALD: 1994 it says.</p> <p>8 BY MR. TISI:</p> <p>9 Q. 1994. Excuse me.</p> <p>10 A. Yeah, I think I talk about those</p> <p>11 later on in the report.</p> <p>12 Q. And you also -- there was also a lot</p> <p>13 of literature that was coming out at the time.</p> <p>14 True?</p> <p>15 A. Again, as I said, I didn't look</p> <p>16 at -- do a scientific review of all the</p> <p>17 literature.</p> <p>18 Q. Well, let's -- you talk about --</p> <p>19 let's talk first about Cramer because in paragraph</p> <p>20 -- page -- on several pages you talk about</p> <p>21 Dr. Cramer's 1982 study over 40 years ago.</p> <p>22 Right?</p> <p>23 A. I talk about it on the previous</p> <p>24 page.</p>	<p style="text-align: right;">Page 208</p> <p>1 A. I'm assuming that.</p> <p>2 Q. Okay. First sentence says:</p> <p>3 "The possibility that ovarian cancer</p> <p>4 may be caused by exposure to various hydrous</p> <p>5 magnesium silicates such as talc and asbestos has</p> <p>6 been raised by several researchers."</p> <p>7 Do you see that?</p> <p>8 A. I see that.</p> <p>9 Q. Okay. And so the question is right</p> <p>10 here in the paper about the safety of talc. Going</p> <p>11 back and if you look at the footnotes, those</p> <p>12 footnotes go back to the Henderson article that we</p> <p>13 talked about before. Footnote number 2.</p> <p>14 A. I see what you're saying.</p> <p>15 Q. Okay. And so he conducts -- just to</p> <p>16 make sense, okay, of what is going on here.</p> <p>17 He conducts a study based upon</p> <p>18 studies that happened previously about the</p> <p>19 potential of talc as a cause of ovarian cancer?</p> <p>20 A. I can't agree or disagree with that</p> <p>21 because I don't know. I mean, I see there's a --</p> <p>22 number one, I haven't studied this aside from</p> <p>23 talking about it a little bit but --</p> <p>24 Q. Okay.</p>
<p style="text-align: right;">Page 207</p> <p>1 MR. TISI: Okay. Exhibit</p> <p>2 Number 12, please. Just look at that for</p> <p>3 a moment.</p> <p>4 (Document marked for</p> <p>5 identification as Sutcliffe Exhibit 12.)</p> <p>6 BY MR. TISI:</p> <p>7 Q. Dr. Cramer just -- just for the</p> <p>8 record is a -- is a researcher and epidemiologist</p> <p>9 and gynecologist out of Harvard, right?</p> <p>10 A. I don't know where Dr. Cramer, if</p> <p>11 Dr. Cramer --</p> <p>12 Q. Well, it says Department of</p> <p>13 Obstetrics, Gynecology, and Pathology, Boston</p> <p>14 Hospital for Women, Harvard School of Public</p> <p>15 Health.</p> <p>16 All of those things, those are good</p> <p>17 institutions?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. It says sponsored by an NIH</p> <p>20 grant.</p> <p>21 Do you see that?</p> <p>22 A. I see that, yes.</p> <p>23 Q. Okay. And this is peer-reviewed,</p> <p>24 right?</p>	<p style="text-align: right;">Page 209</p> <p>1 A. -- you know.</p> <p>2 Q. But in realtime, if we're looking at</p> <p>3 what happens in realtime, okay, he says that there</p> <p>4 has been interest in the question of whether or</p> <p>5 not talc is a cause of ovarian cancer, correct?</p> <p>6 A. He says what he says here, yes.</p> <p>7 Q. Right. All right.</p> <p>8 And so J&J would be on notice that</p> <p>9 there were questions being raised about the safety</p> <p>10 of both talc and asbestos, correct?</p> <p>11 A. I think that I stated in my -- in my</p> <p>12 report that J&J was following the research</p> <p>13 alleging that association.</p> <p>14 Q. Okay. And so this would be an</p> <p>15 example of potential disruptive ambiguity</p> <p>16 happening in the 1980s, correct?</p> <p>17 A. I think we have to put it into</p> <p>18 context because there were also questions raised</p> <p>19 about this particular study.</p> <p>20 Q. Understood.</p> <p>21 A. Okay. Just saying.</p> <p>22 Q. I'm not asking -- we're going to</p> <p>23 talk about bunch of studies now. Okay? We're</p> <p>24 going to go through them.</p>

<p style="text-align: right;">Page 210</p> <p>1 A. Yeah. Knowing that.</p> <p>2 Q. We're going to go through them.</p> <p>3 Okay?</p> <p>4 But -- but without reading too much</p> <p>5 in my question, you get a study that comes across</p> <p>6 your desk for a study from the -- supported by the</p> <p>7 National Institutes of Health from a bunch of</p> <p>8 researchers at Harvard saying the possibility of</p> <p>9 ovarian cancer may be caused by, among other</p> <p>10 things, talc has been raised by several</p> <p>11 researchers, and he cites things going back to the</p> <p>12 1970s, right?</p> <p>13 A. It appears that he cited something</p> <p>14 from 1971, correct.</p> <p>15 Q. Right. Right.</p> <p>16 And so -- and so as somebody looking</p> <p>17 at things not with the benefit of hindsight,</p> <p>18 right, not with hindsight bias, we're looking at</p> <p>19 what happens at the time.</p> <p>20 They're saying there is a question</p> <p>21 about the safety of talc, a study is being</p> <p>22 conducted, and the questions go back to the 1970s,</p> <p>23 right?</p> <p>24 A. Number one, I don't agree with your</p>	<p style="text-align: right;">Page 212</p> <p>1 is that, you know, J&J took this seriously --</p> <p>2 Q. Okay.</p> <p>3 A. -- and they met with Dr. Cramer.</p> <p>4 Q. All right.</p> <p>5 A. And that's what we would expect to</p> <p>6 see in a company that cared about the consumer's</p> <p>7 well-being.</p> <p>8 Q. And Dr. Cramer said, if you look at</p> <p>9 the back of his study, said additional studies</p> <p>10 need to be done to explore this question, right?</p> <p>11 A. Where are you? Where are you</p> <p>12 talking about?</p> <p>13 Q. I'm on the page -- on the last page.</p> <p>14 A. Uh-huh.</p> <p>15 Q. "He hopes this report will stimulate</p> <p>16 further study on the relationship of talc exposure</p> <p>17 in relation to ovarian cancer."</p> <p>18 Correct?</p> <p>19 A. Okay. I see that.</p> <p>20 Q. He's not saying this is the final</p> <p>21 word, right? He says this raises the question do</p> <p>22 more studies?</p> <p>23 A. Do more studies.</p> <p>24 Q. And you agree with that, that would</p>
<p style="text-align: right;">Page 211</p> <p>1 original statement that, you know, there are</p> <p>2 questions about the safety of talc. I don't think</p> <p>3 that that's -- I wouldn't put it in that</p> <p>4 framework.</p> <p>5 Q. Okay.</p> <p>6 A. I think --</p> <p>7 Q. Well, let's use his phrase.</p> <p>8 A. I think -- I mean, this was raised,</p> <p>9 I mean.</p> <p>10 Q. Let's use his phrase because I</p> <p>11 really need you to not extrapolate from my</p> <p>12 question. Okay?</p> <p>13 A. Okay.</p> <p>14 Q. Researcher at Harvard says the</p> <p>15 possibility of ovarian cancer may be caused by</p> <p>16 exposure to, among other things, talc has been</p> <p>17 raised by several researchers since the 1970s.</p> <p>18 True or not true?</p> <p>19 A. That's what's written here.</p> <p>20 Q. Okay. So it's being raised and J&J</p> <p>21 knows question is being raised; correct?</p> <p>22 A. Right.</p> <p>23 Q. All right.</p> <p>24 A. And what I have stated in my report</p>	<p style="text-align: right;">Page 213</p> <p>1 be a reasonable thing to do, and that was being</p> <p>2 said not with hindsight but it's being said at the</p> <p>3 time. True?</p> <p>4 A. I would say there are many</p> <p>5 reasonable things that organizations could do --</p> <p>6 Q. Okay.</p> <p>7 A. -- related to this.</p> <p>8 Q. Okay.</p> <p>9 A. And one of them, as I said, is that</p> <p>10 J&J met with them --</p> <p>11 Q. Okay.</p> <p>12 A. -- to better understand what they</p> <p>13 were facing.</p> <p>14 Q. Okay.</p> <p>15 A. The other thing is, you can stay on</p> <p>16 top of the literature. There are many things to</p> <p>17 do.</p> <p>18 Q. Okay. Study it or you could even</p> <p>19 just say, "Hey, look, you know, no problem. Let's</p> <p>20 see if we can study it or we can just change to</p> <p>21 cornstarch and not have a problem at all." Right?</p> <p>22 Could do that?</p> <p>23 A. You know, frankly, I mean, we know</p> <p>24 that J&J was doing other kinds of things being</p>

<p style="text-align: right;">Page 214</p> <p>1 part of -- of conferences and things like that.</p> <p>2 Q. Okay. The 1994 conference you're</p> <p>3 talking about because we are going to talk about</p> <p>4 that in a minute. All right? Right? That's what</p> <p>5 you're talking about?</p> <p>6 A. I'm just talking about being part of</p> <p>7 the scientific community.</p> <p>8 MR. TISI: All right. So next</p> <p>9 thing that happens -- let's go to the</p> <p>10 next study. Let's go ahead 10 years.</p> <p>11 Let's go to 1992.</p> <p>12 I'm going to show you an</p> <p>13 article by Harlow, Exhibit Number 13.</p> <p>14 (Document marked for</p> <p>15 identification as Sutcliffe Exhibit 13.)</p> <p>16 BY MR. TISI:</p> <p>17 Q. And this is a 1992 publication by</p> <p>18 Dr. Harlow, correct?</p> <p>19 A. By -- yes.</p> <p>20 Q. And it says under the Conclusions</p> <p>21 "These data" -- this is a new study.</p> <p>22 "These data support the concept that</p> <p>23 a lifetime pattern of perineal talc use may</p> <p>24 increase the risk for epithelial ovarian cancer</p>	<p style="text-align: right;">Page 216</p> <p>1 get there. It's the last page.</p> <p>2 BY MR. TISI:</p> <p>3 Q. Page 26.</p> <p>4 A. Okay. Thank you.</p> <p>5 Q. It says:</p> <p>6 "Nevertheless, given the poor</p> <p>7 prognosis for ovarian cancer, any potentially</p> <p>8 harmful exposures should be avoided, particularly</p> <p>9 those with limited benefits. For this reason, we</p> <p>10 discourage the use of talc in genital hygiene,</p> <p>11 particularly as a daily habit."</p> <p>12 Do you see that?</p> <p>13 A. I see that.</p> <p>14 Q. All right. So they're recommending</p> <p>15 at this time in realtime, not using the benefit of</p> <p>16 hindsight bias, they're recommending in realtime</p> <p>17 in 1992 that maybe women in light of the</p> <p>18 then-existing information, okay, that women not be</p> <p>19 exposed to talc which has limited benefit. True?</p> <p>20 A. I see what's written here.</p> <p>21 Q. And you agree with me that I'm not</p> <p>22 lying about what it says?</p> <p>23 A. No, I see what's written.</p> <p>24 Q. Okay. And what is written is</p>
<p style="text-align: right;">Page 215</p> <p>1 but is unlikely to be the etiology for the</p> <p>2 majority of epithelial ovarian cancers."</p> <p>3 Correct?</p> <p>4 A. Ah.</p> <p>5 Q. The very first page under</p> <p>6 Conclusions.</p> <p>7 A. Oh, right there. Okay.</p> <p>8 Q. Let's read it together.</p> <p>9 "These data support the concept that</p> <p>10 a lifetime pattern of perineal talc use may</p> <p>11 increase the risk for epithelial ovarian cancer</p> <p>12 but is unlikely to be the etiology for the</p> <p>13 majority of epithelial ovarian cancers."</p> <p>14 Right?</p> <p>15 A. I see what you're reading.</p> <p>16 Q. Okay. I'm not going to ask you</p> <p>17 about the scientific question there. That's for</p> <p>18 other people.</p> <p>19 But let me ask you about another</p> <p>20 statement that Dr. Harlow and his colleagues make</p> <p>21 here. It's the last sentence. Take a look at</p> <p>22 this.</p> <p>23 "Nevertheless" --</p> <p>24 MR. EWALD: Hold on. Let her</p>	<p style="text-align: right;">Page 217</p> <p>1 actually what it says, correct?</p> <p>2 A. It says:</p> <p>3 "Nevertheless, given the poor</p> <p>4 prognosis for ovarian cancer, any potentially</p> <p>5 harmful exposures should be avoided, particularly</p> <p>6 those with limited benefits. For this reason, we</p> <p>7 discourage the use of talc in genital hygiene,</p> <p>8 particularly as a daily habit."</p> <p>9 Q. So --</p> <p>10 MR. EWALD: One second. I</p> <p>11 know you already read it once. For the</p> <p>12 court reporter's benefit, when you're</p> <p>13 reading something, she has to take it</p> <p>14 down.</p> <p>15 THE WITNESS: Okay. Oh, I'm</p> <p>16 going too fast?</p> <p>17 MR. EWALD: A little too fast</p> <p>18 but okay.</p> <p>19 THE WITNESS: Sorry.</p> <p>20 MR. TISI: She got it.</p> <p>21 MR. EWALD: She got it.</p> <p>22 (Laugh).</p> <p>23 MR. TISI: She's good.</p> <p>24 BY MR. TISI:</p>

<p style="text-align: right;">Page 218</p> <p>1 Q. And so in realtime, not in the</p> <p>2 benefit of hind -- of bias, now we have a</p> <p>3 recommendation being made that maybe women</p> <p>4 shouldn't be exposed to this talc issue in light</p> <p>5 of what is known and what is not known. True?</p> <p>6 A. That's what it says here.</p> <p>7 Q. All right. Do you have any evidence</p> <p>8 that they reached out to speak to Dr. Harlow?</p> <p>9 A. I have -- I don't know that they did</p> <p>10 or that they didn't.</p> <p>11 Q. Do you know whether or not they</p> <p>12 said, "You know something? Maybe that's a good</p> <p>13 idea. Let's get our various committees and people</p> <p>14 together and see whether or not we need to either</p> <p>15 advise women not to use talc as in genital hygiene</p> <p>16 or maybe switch to cornstarch."</p> <p>17 Have you seen anything like that in</p> <p>18 response to this in the medical literature at the</p> <p>19 time? Did you see it?</p> <p>20 A. I -- I can't say that I did or that</p> <p>21 I didn't. What I know is we put this into</p> <p>22 context.</p> <p>23 As I wrote in -- in my report, you</p> <p>24 know, at this time, we know that the World Health</p>	<p style="text-align: right;">Page 220</p> <p>1 Okay. If I interrupted David</p> <p>2 Kessler on his long pages long answers</p> <p>3 every single time I didn't feel he was</p> <p>4 being responsive, I still let him finish.</p> <p>5 She's giving relatively short</p> <p>6 answers. Let her finish.</p> <p>7 THE WITNESS: This was just a</p> <p>8 couple years before --</p> <p>9 BY MR. TISI:</p> <p>10 Q. Okay.</p> <p>11 A. -- that there were studies</p> <p>12 suggesting -- I mean, that IARC said there was no</p> <p>13 association.</p> <p>14 Q. Okay.</p> <p>15 A. And there were several studies that</p> <p>16 came out that said there was no association.</p> <p>17 Q. Okay. Now --</p> <p>18 A. J&J was keeping on top of the</p> <p>19 literature at this time.</p> <p>20 Q. Okay. Now, in 1992, there was a</p> <p>21 recommendation that women not be exposed to talc</p> <p>22 when used in the genital area, correct?</p> <p>23 Dr. Harlow.</p> <p>24 A. I see what's written here.</p>
<p style="text-align: right;">Page 219</p> <p>1 Organization IARC was saying that after extensive</p> <p>2 review of the vast scientific literature on talc</p> <p>3 that there is no scientific evidence for cosmetic</p> <p>4 talc causes cancer.</p> <p>5 Q. Actually, what they said was that</p> <p>6 there is possible human carcinogen in 2006;</p> <p>7 correct?</p> <p>8 A. At this point in time, they did not</p> <p>9 say that.</p> <p>10 Q. All right. At that point in time,</p> <p>11 the IARC review was years before, right? This is</p> <p>12 emerging literature.</p> <p>13 A. This is -- the IARC review was just</p> <p>14 a couple years before.</p> <p>15 Q. Okay.</p> <p>16 A. As was --</p> <p>17 Q. I'm going to ask you --</p> <p>18 MR. EWALD: Hold on a second.</p> <p>19 She's being responsive to your question.</p> <p>20 Let her finish.</p> <p>21 MR. TISI: No, she's not being</p> <p>22 responsive to my question at all.</p> <p>23 MR. EWALD: Then let her</p> <p>24 finish.</p>	<p style="text-align: right;">Page 221</p> <p>1 MR. TISI: Okay. Let's move</p> <p>2 ahead two years to 1996. We'll go</p> <p>3 through these very quickly.</p> <p>4 Here's an article by Cook.</p> <p>5 MR. EWALD: You mean four</p> <p>6 years?</p> <p>7 MR. TISI: Four years.</p> <p>8 (Document marked for</p> <p>9 identification as Sutcliffe Exhibit 14.)</p> <p>10 BY MR. TISI:</p> <p>11 Q. This is actually a Johns Hopkins</p> <p>12 study, correct? In the American Journal of</p> <p>13 Epidemiology.</p> <p>14 A. (Reviews document.)</p> <p>15 Q. Actually, it's published in the --</p> <p>16 A. It looks --</p> <p>17 Q. -- Johns Hopkins University School</p> <p>18 of Hygiene?</p> <p>19 A. I don't -- yeah, I don't think it's</p> <p>20 a --</p> <p>21 Q. You're correct. It's published in</p> <p>22 the Johns Hopkins University --</p> <p>23 A. Yeah.</p> <p>24 Q. -- School of Hygiene.</p>

<p style="text-align: right;">Page 222</p> <p>1 A. The researchers were from 2 Washington. 3 Q. Right. 4 And what they say is studies 5 demonstrating -- documenting -- 6 MR. EWALD: Sorry. Where are 7 you? 8 MR. TISI: First page. 9 BY MR. TISI: 10 Q. It says: 11 "Studies documenting the migration 12 of carbon particles and radioactive particulate 13 agents from the vagina to the ovaries, as well as 14 those that have identified talc-like particles 15 more frequently in ovarian tumors than in normal 16 human ovarian tissue, have raised concern that 17 genital powder exposure may increase a woman's 18 risk of developing ovarian cancer." 19 Do you see that? 20 A. I see that. 21 Q. Okay. So they're raising the 22 question in this Johns Hopkins journal, okay, that 23 whether -- that, number one, talc may migrate; 24 number two, that it's found in ovarian tissue; and</p>	<p style="text-align: right;">Page 224</p> <p>1 Number 15. 2 (Document marked for 3 identification as Sutcliffe Exhibit 15.) 4 BY MR. TISI: 5 Q. Do you know any of the authors here? 6 A. I do not. 7 Q. Do you see where they talk about an 8 increased risk of ovarian cancer seen in this 9 Johns Hopkins study? 10 A. (Reviews document.) 11 Q. Let's see if I can help you here. 12 If you go to page 22 of the document. 13 A. 22? Okay. 14 Q. It says on the right-hand column, 15 second to last full paragraph it says: 16 "The results of our study and others 17 suggest that genital fiber exposure may be 18 associated with an adverse -- with an adverse 19 effect but further study is needed to determine if 20 this relationship is causal in nature." 21 Do you see that? 22 A. I see that. 23 Q. That's a Johns Hopkins study, 24 correct?</p>
<p style="text-align: right;">Page 223</p> <p>1 number three, there are concerns about a risk of 2 women getting ovarian cancer as a result. True? 3 A. I see what is written here. 4 Q. And what I'm saying is true, 5 correct? 6 A. It's what is written. 7 Q. Right. Okay. 8 And they go on to say, and if you 9 look at the abstract portion, it says these 10 results support that hypothesis. 11 Do you see that? 12 A. I see that. 13 Q. Okay. At the very back if you go to 14 the last page -- actually, just leave it there. 15 So they agree that question is being 16 raised again in 1996, correct? 17 A. This is written in 1997. 18 MR. TISI: Okay. Let's go to 19 1992. Let's go backwards, actually. 20 MR. EWALD: Back in time? 21 MR. TISI: Back in time. 22 MR. EWALD: Yeah. 23 MR. TISI: This is Rosenblatt. 24 This is a Hopkins study. Exhibit</p>	<p style="text-align: right;">Page 225</p> <p>1 A. The faculty from Johns Hopkins, yes. 2 MR. TISI: Let's look at 3 Exhibit Number 16. 4 (Document marked for 5 identification as Sutcliffe Exhibit 16.) 6 BY MR. TISI: 7 Q. This is a study by among -- by Gross 8 and Berg. Now, if you look at the back of this 9 particular study, it's acknowledging -- page 194 10 it has an Acknowledgements section, correct? 11 A. Yes. 12 Q. And it was supported in part by 13 Johnson & Johnson. The authors thank Dr. Wang and 14 Dr. Wehner in further assistance with the paper. 15 You see that? 16 A. Yes, I see that. 17 Q. And you actually refer to Dr. Wehner 18 in your report, correct? 19 A. I at one -- I think in one paragraph 20 I talk about that. 21 Q. And this is a Johnson & 22 Johnson-sponsored paper, correct? 23 A. The research was supported in part 24 by Johnson & Johnson.</p>

<p style="text-align: right;">Page 226</p> <p>1 Q. So it's by Johnson & Johnson to know 2 about this paper, correct? 3 A. Again, I didn't -- have not 4 systematically read the literature. So I don't 5 know. 6 Q. Let's put -- let's look at what they 7 say about the concern about a potential risk. 8 In the Introduction, would you read 9 the first sentence, please? First two sentences, 10 actually. 11 A. "The concern that use of talc or 12 talc-containing substances in the perineal region 13 of women may subject them to an increased risk for 14 ovarian cancer has become an important issue in 15 the study of ovarian cancer." 16 Q. Okay. Let's go to the Introduction 17 section. 18 What does that say? First two 19 sentences. 20 A. "There has been recent concern that 21 women's use of talc or talc-containing substances 22 in their perineal region puts them at an increased 23 risk for ovarian cancer." 24 Q. Next sentence.</p>	<p style="text-align: right;">Page 228</p> <p>1 written here. I have not studied this. 2 I just see what's written. 3 BY MR. TISI: 4 Q. Okay. But as somebody who is 5 involved in sensemaking and as trying to make 6 sense of what was happening at the time and not of 7 the benefit of what we know now, okay, the issue 8 is being raised, additional studies are being 9 recommended, and there's an association that's 10 being reported in this J&J-sponsored study. True? 11 A. I understand where you're going, and 12 what I also have to say is we need to look at the 13 other things that were happening in the context -- 14 Q. We're going to -- 15 A. -- at the time. 16 Q. We're going to -- 17 A. It's important to do that. 18 Q. I'm going to do it all. I promise 19 you, I will. Be patient with me. 20 A. Okay, but I'm just saying. 21 Q. I'm just saying, how about answering 22 my question, and I promise you we'll go back ad 23 we'll talk about IARC and the FDA and we're going 24 to talk about all kinds of things. Okay?</p>
<p style="text-align: right;">Page 227</p> <p>1 A. "This concern has been brought to 2 the forefront by several case-control studies 3 assessing the risk of ovarian cancer associated 4 with perineal talc use." 5 Q. Okay. And actually if you go to the 6 very last page, when they report the results of 7 the study on page 193, would you read the last 8 paragraph? 9 A. "Thus, the body of knowledge found 10 in the medical literature does not unequivocally 11 support the hypothesis that talc use by women puts 12 them at an increased risk of ovarian cancer. 13 However, the results of the meta-analyses do 14 suggest the possibility of an increased risk of 15 ovarian cancer due to perineal talc use. Further 16 research in this area is warranted by these 17 results." 18 Q. Okay. So the questions in this 19 J&J-sponsored study, they acknowledge longstanding 20 questions about the safety of talc and they say 21 additional studies need to be conducted, but the 22 evidence so far supports the association. True? 23 MR. EWALD: Objection to form. 24 THE WITNESS: I see what's</p>	<p style="text-align: right;">Page 229</p> <p>1 So let's just deal with the 2 questions here because you don't need to predict 3 where I'm going. 4 A. I'm not predicting where you're 5 going. 6 Q. Okay. So let's just do it a little 7 bit at a time and let's just discuss at a time. 8 In 1994, okay, they do -- J&J 9 sponsors with Dr. Wehner's help a meta-analysis 10 which says questions are being raised about the 11 safety of talc with respect to ovarian cancer. 12 True or not true? 13 A. I see what's written here and that's 14 true. 15 Q. Okay. Secondly, they say additional 16 studies need to be conducted, but there is 17 evidence of an association. 18 True or not true? 19 A. I see that "further research in this 20 area is warranted." 21 Q. Okay. And it says there is a 22 possibility of an increased risk of talc and 23 ovarian cancer. True? 24 A. I see what's written there.</p>

<p style="text-align: right;">Page 230</p> <p>1 Q. All right. Let's go forward in 2 time. Let's go to the next. 1999. 3 Now, after Dr. Cramer says there was 4 problems with the study, he continued to publish, 5 did he not? 6 A. I believe one of those studies had 7 his name on it. 8 MR. TISI: Okay. Let's look 9 at what he says in 1999. 10 (Document marked for 11 identification as Sutcliffe Exhibit 17.) 12 BY MR. TISI: 13 Q. And this is a study, Exhibit 14 Number 17. It says at the top of the abstract on 15 the right-hand side of the page. 16 I'm sorry. Are you following my 17 question or are you reading your report? 18 A. No, I'm just looking. 19 Q. Okay. Let's look at my question 20 here. 21 On the right-hand side of the 22 page -- left-hand side of the page -- excuse me -- 23 it says: 24 "We conclude that there is a</p>	<p style="text-align: right;">Page 232</p> <p>1 A. I see that. 2 Q. All right. Now, we've done the 3 1990s. Do you see any -- and we've talked about 4 several studies where the issue was being raised. 5 We're going to talk about all the other things in 6 context. I'm going to talk about the FDA and the 7 meeting at the FDA and all that stuff in a minute. 8 But have you seen in your review of 9 the medical -- review of the internal documents 10 any internal discussion at J&J as to whether or 11 not either switch to cornstarch or warnings and 12 instructions should be added to talc? Did you see 13 any internal discussions about that? 14 A. I was -- 15 MR. EWALD: Time frame? 16 MR. TISI: In the 1990s I said 17 up until now. 18 MR. EWALD: Okay. 19 BY MR. TISI: 20 Q. From '84 to '99. Now we're talking 21 about a 15-year period of time. 22 In that time frame, did you ever see 23 any internal discussion about "Maybe these 24 researchers are right, maybe we ought to just in</p>
<p style="text-align: right;">Page 231</p> <p>1 significant association between the use of talc in 2 genital hygiene and risk of epithelial ovarian 3 cancer that, when reviewed in perspective of 4 published data on this association, warrants more 5 formal public health warnings." 6 Do you see that? 7 A. I see that. 8 Q. And if you look at the back, the 9 last sentence of it -- and I'm not going to ask 10 you to comment on the design of the study or the 11 science of the study or anything like that -- they 12 make a safety recommendation. 13 Do you see that? 14 Last sentence. 15 "We estimate that avoidance of talc 16 in genital hygiene might reduce the occurrence of 17 a highly lethal form of cancer by at least 10%. 18 Balanced against what are primarily aesthetic 19 reasons for using talc in genital hygiene, the 20 risk benefit decision not complex. Appropriate 21 warnings should be provided to women about the 22 potential risks of regular use of talc in the 23 genital area." 24 Do you see that?</p>	<p style="text-align: right;">Page 233</p> <p>1 light of the ambiguity of the -- of the studies, 2 disruptive ambiguity of the studies, maybe we 3 ought to take risk mitigation"? Did you see any 4 discussion about that? 5 A. What I saw is that J&J was closely 6 following the research, that it was paying 7 attention to regulatory bodies, that it was 8 engaging with people in workshops, and that it was 9 being aware of what was -- what regulatory bodies 10 were saying. 11 Q. So other than being aware, you're 12 not -- move to strike the answer because it's not 13 responsive. 14 My question was: other than being 15 aware of the literature, which I agree that they 16 were aware of everything, my question is: Other 17 than being aware, would you tell me whether or not 18 there was any discussion about whether on balance 19 warnings, instructions or perhaps a change in 20 design ought to -- ought to occur? 21 A. I was not looking at -- at a single 22 event or whatever. I'm looking at J&J's pattern 23 of actions over time. 24 Q. And I'm asking -- I'm asking you</p>

<p style="text-align: right;">Page 234</p> <p>1 about actions.</p> <p>2 Do you see any actions within J&J</p> <p>3 where they actively considered whether or not to</p> <p>4 change to cornstarch?</p> <p>5 Let's take it one at a time.</p> <p>6 A. First of all, J&J had cornstarch</p> <p>7 on -- on --</p> <p>8 Q. Withdraw. Excuse me. Withdraw.</p> <p>9 Withdraw because I'm going to talk about this as</p> <p>10 well.</p> <p>11 Withdraw Johnson's Baby Powder with</p> <p>12 talc in favor of its cornstarch.</p> <p>13 Do you see any discussion about</p> <p>14 that?</p> <p>15 A. I did not examine that issue.</p> <p>16 Q. Okay. So the answer would be no,</p> <p>17 you saw no discussion?</p> <p>18 A. I can't say that I did or that I</p> <p>19 didn't.</p> <p>20 Q. Well, this is your time to actually</p> <p>21 answer that question. Okay?</p> <p>22 A. Yeah.</p> <p>23 Q. Honestly.</p> <p>24 So my question is: As you sit here</p>	<p style="text-align: right;">Page 236</p> <p>1 "This study provides some support</p> <p>2 for the hypothesis that perineal talc use is</p> <p>3 associated with an increased risk of EOC."</p> <p>4 Do you see that? Left-hand side.</p> <p>5 Excuse me. In the abstract.</p> <p>6 A. Where is it? Left-hand side?</p> <p>7 Q. Left-hand side. The bolded part,</p> <p>8 last sentence.</p> <p>9 A. Oh, okay. I see it.</p> <p>10 Q. See that?</p> <p>11 A. "Some support for the hypothesis."</p> <p>12 I see it.</p> <p>13 Q. Now, it also talks about -- if you</p> <p>14 go halfway down the first full paragraph of the</p> <p>15 article, it says:</p> <p>16 "Collectively, these studies point</p> <p>17 to a possible etiologic role of talc in ovarian</p> <p>18 cancer via an inflammatory process at the site of</p> <p>19 the ovarian epithelium."</p> <p>20 Do you see that?</p> <p>21 A. I see that.</p> <p>22 Q. It goes on in the next paragraph.</p> <p>23 It says:</p> <p>24 "The role of cornstarch powder on</p>
<p style="text-align: right;">Page 235</p> <p>1 today, do you remember seeing any discussion in</p> <p>2 that 15-year period about whether or not you ought</p> <p>3 to switch -- J&J ought to switch or withdraw its</p> <p>4 product or at least put a warning label on it?</p> <p>5 A. What I saw is that J&J was following</p> <p>6 the research, was paying attention --</p> <p>7 Q. Okay.</p> <p>8 A. -- to regulators, and I did not -- I</p> <p>9 can't say whether they did or they didn't because</p> <p>10 I wasn't looking at that.</p> <p>11 MR. TISI: Okay. Let's go to</p> <p>12 2004, Exhibit Number 25.</p> <p>13 Excuse me.</p> <p>14 (Document marked for</p> <p>15 identification as Sutcliffe Exhibit 18.)</p> <p>16 BY MR. TISI:</p> <p>17 Q. This is a different group of</p> <p>18 researchers from Dr. Mills.</p> <p>19 MR. EWALD: Is that 18?</p> <p>20 MR. TISI: This is Exhibit</p> <p>21 Number 18, yes, please.</p> <p>22 BY MR. TISI:</p> <p>23 Q. If you look at the left-hand side,</p> <p>24 it says:</p>	<p style="text-align: right;">Page 237</p> <p>1 ovarian cancer has also been evaluated in</p> <p>2 epidemiologic research and a recent review</p> <p>3 concluded that there is no association between</p> <p>4 this type of powder and increased risk of ovarian</p> <p>5 cancer."</p> <p>6 Do you see that?</p> <p>7 A. I see that.</p> <p>8 Q. But then it goes on to say:</p> <p>9 "Cornstarch is also not thought to</p> <p>10 exert the same toxicologic reaction in human</p> <p>11 tissues as does talc."</p> <p>12 Do you see that?</p> <p>13 A. I see that.</p> <p>14 Q. So they're making a comparison</p> <p>15 between the risk-benefit of cornstarch and talc in</p> <p>16 this article, correct?</p> <p>17 A. They're raising the issue of</p> <p>18 cornstarch in the article. I see where it's</p> <p>19 written.</p> <p>20 Q. And at the very last page of the</p> <p>21 article, they say the question, however -- the</p> <p>22 second sentence starts:</p> <p>23 "However, given the suggestive</p> <p>24 though uncertain role of talcum powder and EOC</p>

<p style="text-align: right;">Page 238</p> <p>1 found in epidemiologic studies, including the 2 present study, users should exercise prudence in 3 reducing or eliminating use. In this instance, 4 the precautionary principle should be invoked, 5 especially given that this is a serious form of 6 cancer, usually associated with a poor prognosis, 7 with no current effective screening tool, steady 8 incidence rates during the last quarter century 9 and no prospect for successful therapy. Unlike 10 other forms of environmental exposures, talcum 11 powder use is easily avoidable." 12 Do you see that? 13 A. I see what you're reading, correct. 14 Q. Is any part of that untrue at the 15 time? Not with hindsight, but looking at it like 16 right at that snapshot in time in 2004, is any 17 part of that not true from your perspective? 18 A. I'm just -- I see what's written 19 here. I can't say whether it's true or not true. 20 It is what the researchers wrote. 21 Q. Okay. This isn't referred to in 22 your -- in your sensemaking report, is it? 23 A. I wasn't looking at -- number one, 24 I've already said that I wasn't looking at a</p>	<p style="text-align: right;">Page 240</p> <p>1 Q. Okay. There's a tree over in that 2 corner, right? 3 A. Yes. A plant. 4 Q. I'm paying attention to it now. I'm 5 paying attention to it now. I'm looking at it. 6 Am I doing anything with that tree? 7 A. Again, J&J was -- 8 Q. I'm just asking: Am I doing 9 anything with that tree? I'm paying attention to 10 it right now. I'm looking at it. 11 Am I -- am I paying attention to it? 12 A. I don't know whether you're paying 13 attention to it. 14 Q. Okay. You agree that paying 15 attention to and doing something are different 16 things. True? 17 A. I agree that's true. 18 Q. Okay. So now other than paying 19 attention to the question, did you ever see any 20 internal analysis at J&J -- now we're at 2004. 20 21 years have happened between the time of the Cramer 22 study -- and we haven't gone through all the 23 studies, and I'm not pretending that I have. 24 Between 1984 -- 82 and 2004, several</p>
<p style="text-align: right;">Page 239</p> <p>1 systematic analysis of all the studies I looked 2 through. 3 Q. I'm not asking you to analyze the 4 study. I'm asking you -- look, and I really want 5 to be fair to you here. 6 We have now gone through several 7 articles and we're going to go through several 8 more where issues are saying not only is there a 9 potential association, which I'm not asking you to 10 do. You're not an epidemiologist. 11 But as somebody concerned with 12 safety, they're raising questions about whether or 13 not women should be warned, cornstarch ought to be 14 used, women should be instructed not to use it, 15 and studies be done. 16 All those things are being raised in 17 realtime. True? 18 A. The research was happening when it 19 was happening. And at the same time, you know, 20 what I have shown in my analysis is that J&J was 21 paying attention to the scientific research, that 22 it was paying attention to what regulators were 23 saying, that it was paying attention to -- to what 24 was happening.</p>	<p style="text-align: right;">Page 241</p> <p>1 researchers were raising whether or not risk 2 safety ought to be considered to prevent people 3 from this potential of ovarian cancer. True? 4 A. There were studies that came out. 5 True. 6 Q. Okay. And now I'm asking you this: 7 Did J&J internally -- I'm not asking you what they 8 talked about at the FDA or at conferences or 9 whatever. 10 Did you ever see an internal 11 evaluation in that 20-year period where J&J said, 12 "Let's put everything on the table and let's 13 decide whether or not perhaps maybe we should 14 warn, substitute cornstarch, or instruct women not 15 to use it in the genital area"? 16 A. What I saw and what I established in 17 my report is that J&J created -- developed over 18 time through the best practices of sensemaking 19 their institutional knowledge of their product and 20 the safety of its product, and that there were no 21 -- nothing at that moment in time was coming to 22 the forefront to change what they were thinking. 23 Q. Okay. Now, can you answer my 24 question?</p>

<p style="text-align: right;">Page 242</p> <p>1 A. That's an answer to your question.</p> <p>2 Q. All right. My question is: Have</p> <p>3 you seen any internal document, any document where</p> <p>4 the company said, "We are doing a systematic" --</p> <p>5 I'm not asking to you do the systematic review.</p> <p>6 Did you see any internal document</p> <p>7 within the company where they did a systematic</p> <p>8 review of what was available at the time in that</p> <p>9 22-year period that would -- to take risk</p> <p>10 reduction measures?</p> <p>11 A. Again, you know, I'm not looking at</p> <p>12 a single instance. I'm looking over time --</p> <p>13 Q. I'm not asking. I'm asking --</p> <p>14 A. -- of what J&J was doing.</p> <p>15 Q. I'm looking at a 20-year period of</p> <p>16 time. Yes, I agree. 20-year period. Pick a</p> <p>17 date. Pick a time. Pick a time frame.</p> <p>18 Have you seen any document internal</p> <p>19 to the company where they actually analyze whether</p> <p>20 or not risk reduction measures should be taken in</p> <p>21 light of the then-existing knowledge?</p> <p>22 A. I was not -- I was not examining</p> <p>23 risk reduction measures.</p> <p>24 Q. Okay.</p>	<p style="text-align: right;">Page 244</p> <p>1 Cedars-Sinai, University of Southern California,</p> <p>2 Stanford, Memorial Sloan-Kettering, Dartmouth,</p> <p>3 Yale.</p> <p>4 You see all those?</p> <p>5 A. I see those.</p> <p>6 Q. You see all those people?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Okay. Now, they say -- these are --</p> <p>9 you don't disagree that these are major academic</p> <p>10 and scientific institutions in this country?</p> <p>11 A. No.</p> <p>12 Q. At the very top, there's an abstract</p> <p>13 and at the very bottom of that abstract, it says:</p> <p>14 "In summary, genital powder use is a</p> <p>15 modifiable exposure associated with</p> <p>16 small-to-moderate increases in risk of most</p> <p>17 histologic subtypes of epithelial ovarian cancer."</p> <p>18 Do you see that?</p> <p>19 A. I see what's written.</p> <p>20 Q. All right. At the very back of the</p> <p>21 study, it says -- and I'm not asking you about the</p> <p>22 science of this. I'm asking you about the</p> <p>23 recommendations, taken together with safety issue,</p> <p>24 right?</p>
<p style="text-align: right;">Page 243</p> <p>1 A. I was examining J&J's</p> <p>2 institutionalized knowledge and whether the ways</p> <p>3 that in which they were acting were showing</p> <p>4 that -- that they cared about consumers.</p> <p>5 MR. TISI: Let me look at</p> <p>6 Exhibit Number 19. This is now we're</p> <p>7 going forward to 2013. This is Exhibit</p> <p>8 Number 19.</p> <p>9 (Document marked for</p> <p>10 identification as Sutcliffe Exhibit 19.)</p> <p>11 BY MR. TISI:</p> <p>12 Q. This is an article by Terry. The</p> <p>13 Ovarian Cancer Association Consortium.</p> <p>14 You see that one? You see the very</p> <p>15 top?</p> <p>16 You see at the very bottom there it</p> <p>17 says a bunch of authors and Ovarian Cancer</p> <p>18 Association Consortium?</p> <p>19 A. I see it.</p> <p>20 Q. Okay. If you look at the bottom, it</p> <p>21 says authors affiliated. Just take a scan in</p> <p>22 there. We see some of the most major institutions</p> <p>23 in the country, cancer institutions.</p> <p>24 Harvard School of Public Health,</p>	<p style="text-align: right;">Page 245</p> <p>1 It says:</p> <p>2 "In conclusion, our large pooled</p> <p>3 analysis of case-control studies shows a</p> <p>4 small-to-moderate (20%-30%) increased risk of</p> <p>5 ovarian cancer" --</p> <p>6 MR. EWALD: Hold on. I'm</p> <p>7 sorry. She wasn't there at the last</p> <p>8 page.</p> <p>9 THE WITNESS: Yeah.</p> <p>10 MR. EWALD: There you go.</p> <p>11 BY MR. TISI:</p> <p>12 Q. Actually, why don't you read it so</p> <p>13 I'm not -- I'm not rushing quickly. You read from</p> <p>14 "In conclusion."</p> <p>15 A. So "In conclusion, our large pooled</p> <p>16 analysis of case-control studies shows a</p> <p>17 small-to-moderate increased risk of ovarian cancer</p> <p>18 with genital powder use, most clearly pertaining</p> <p>19 to nonmucinous -- I guess -- epithelial ovarian</p> <p>20 tumors. More work is needed to understand how</p> <p>21 genital powders may exert a carcinogenic effect,</p> <p>22 and which constituents (e.g., talc) may be</p> <p>23 involved. Because there are few modifiable risk</p> <p>24 factors for ovarian cancer, avoidance of genital</p>

<p style="text-align: right;">Page 246</p> <p>1 powders may be a possible strategy to reduce 2 ovarian cancer incidence." 3 Q. Now, this group, this consortium 4 here is saying, maybe in light of the 5 then-existing knowledge, avoidance of genital 6 powders is prudent. True? 7 A. I -- I read what -- what is here. 8 Q. Okay. But what is here is now a 9 continuum. We've looked at several researchers: 10 Harvard, Yale, Dartmouth, Stanford. People going 11 back. We talked about the Harlow study from 1992. 12 Now this is 2013. Excuse me. 2013 I believe. 13 A. 2013. 14 Q. And they're also talking about 15 avoiding the potential risk factor of ovarian -- 16 of using talc. True? 17 A. They're saying what they're saying. 18 True. 19 Q. Right. 20 And so now my question is now I'm 21 going to 2013. Okay? 22 We saw it from Mills. We saw it 23 from Terry. We saw it from Harlow. We saw it 24 from Cramer. We saw it from all these people</p>	<p style="text-align: right;">Page 248</p> <p>1 my question is no, you haven't seen -- 2 A. I have seen -- 3 Q. Let me finish. 4 A. -- or haven't seen? 5 Q. You have not seen any internal 6 analysis from J&J applying any standard metric to 7 determine whether or not they should change to 8 cornstarch or perhaps issue a warning? 9 A. I did not study J&J's individual 10 decisions related to that issue. 11 Q. Okay. Let's look at some 12 organizations -- what some organizations were 13 saying at the time. 14 MR. EWALD: And just -- I'm 15 trying to get at a good spot. We've been 16 going more than hour. It's 1:00 almost. 17 MR. TISI: We'll take a 18 break -- 19 MR. EWALD: I know you're on a 20 run, but just whenever you want to at a 21 good spot. 22 MR. TISI: I will. Thank you 23 very much. 24 Let's look at Exhibit</p>
<p style="text-align: right;">Page 247</p> <p>1 talking about: Maybe it's a good idea to take 2 risk reduction measures and perhaps avoid the use 3 of talc. 4 Do you see that? 5 MR. EWALD: Objection to form. 6 THE WITNESS: They said what 7 they said. 8 BY MR. TISI: 9 Q. Right. 10 Do you see any evidence that Johnson 11 & Johnson at any time in that 20-year had 12 according to applying any standard metric, a 13 policy and procedure, formal or informal, that 14 evaluated whether or not they ought to take safety 15 measures that are being recommended by these 16 authors? 17 A. What I saw is -- and what I analyzed 18 I've already said earlier is -- J&J's 19 institutionalized knowledge that was created over 20 decades, very -- I mean, very rigorously engaging 21 with the scientific literature and experts and 22 paying attention to regulators, and I think you 23 have to put that into context. 24 Q. Okay. So they -- so the answer to</p>	<p style="text-align: right;">Page 249</p> <p>1 Number 20. 2 (Document marked for 3 identification as Sutcliffe Exhibit 20.) 4 BY MR. TISI: 5 Q. I'm showing you Exhibit Number 20, 6 which is an internal e-mail dated July 9, 1999. 7 Now, this is in the time frame that 8 we've been talking about, the 20, 25 years where 9 issues of whether or not to use talc as for 10 feminine hygiene. 11 This occurs in that time frame, 12 right? 13 A. Yes. 14 Q. Okay. And so this is an internal 15 e-mail and you see, actually, it's interesting, 16 some interest here. 17 It says on Thursday, July 8th, 18 internally within J&J they say: 19 "John, You may" -- oh, I'm sorry. 20 It says: 21 "Michael, Michele, depending on how 22 widely this gets publicized, you may want to build 23 this into your forecast thinking (e.g., stay 24 conservative on the total powder business,</p>

<p style="text-align: right;">Page 250</p> <p>1 accelerated shift from talc to cornstarch.)"</p> <p>2 You see that?</p> <p>3 A. I see that.</p> <p>4 Q. Okay. Did you see from your review</p> <p>5 at any time that actually in this time frame J&J</p> <p>6 was considering changing from talc to</p> <p>7 cornstarch --</p> <p>8 A. That's --</p> <p>9 Q. -- in light of what was going on?</p> <p>10 A. As I've said before, I have not</p> <p>11 analyzed any single event or any single issue.</p> <p>12 Q. Now, what they're forwarding here is</p> <p>13 a company -- a press release from the American</p> <p>14 Cancer Society and other organizations, correct?</p> <p>15 A. I don't -- I see what's on here, but</p> <p>16 I don't know what they're doing with this. I</p> <p>17 can't say.</p> <p>18 Q. It says:</p> <p>19 "Medical Experts Recommend Women Use</p> <p>20 Cornstarch Powder."</p> <p>21 A. I see that.</p> <p>22 Q. Realtime, not hindsight bias, right?</p> <p>23 A. I see that.</p> <p>24 Q. Okay. 1999 internal to J&J. True?</p>	<p style="text-align: right;">Page 252</p> <p>1 Q. American Cancer Society is a pretty</p> <p>2 important organization.</p> <p>3 Don't you agree?</p> <p>4 A. Yes, I agree. So is, you know,</p> <p>5 other organizations.</p> <p>6 Q. Right.</p> <p>7 They're choosing which ones to</p> <p>8 believe and which ones don't believe, right?</p> <p>9 A. I disagree with your statement.</p> <p>10 Q. All right. Next, third paragraph</p> <p>11 down:</p> <p>12 "Consumers need to know that there</p> <p>13 are mainly two kinds of powders -- cornstarch and</p> <p>14 talc, he adds. Medical groups, such as the ACS,</p> <p>15 make a clear distinction between the two types of</p> <p>16 powders and offer recommendations to women on</p> <p>17 which ones are considered safe to use. For</p> <p>18 example, 'Talcum Powder and Cancer' from the</p> <p>19 American Cancer Society states: 'Until additional</p> <p>20 information is available, women may wish to</p> <p>21 consider avoiding these products or substituting</p> <p>22 cornstarch-based powders that contain no talc."</p> <p>23 Do you see that?</p> <p>24 A. I see that.</p>
<p style="text-align: right;">Page 251</p> <p>1 A. This looks like an internal to J&J.</p> <p>2 Q. Okay. It says:</p> <p>3 "American Cancer Society and Other</p> <p>4 Cancer Groups Say Non-Talc Powders Are Safe to</p> <p>5 Use."</p> <p>6 Do you see that?</p> <p>7 A. I see that.</p> <p>8 Q. Okay. And it says, the first</p> <p>9 sentence:</p> <p>10 "The American Cancer Society and</p> <p>11 national Ovarian Cancer Coalition, among others,</p> <p>12 are recommending that women use cornstarch</p> <p>13 powders, rather than talcum powders, in the</p> <p>14 genital area."</p> <p>15 You see that?</p> <p>16 A. I see that.</p> <p>17 Q. You said that J&J was paying</p> <p>18 attention to what was going on in the environment,</p> <p>19 right?</p> <p>20 A. I didn't. I said that --</p> <p>21 Q. Right.</p> <p>22 A. -- but I also said that J&J was very</p> <p>23 active in seeking out scientific knowledge about</p> <p>24 that.</p>	<p style="text-align: right;">Page 253</p> <p>1 Q. Okay. And so they're clearly</p> <p>2 squarely raising the question of women really, in</p> <p>3 light of what was known at the time, shouldn't be</p> <p>4 using cornstarch and should be using -- shouldn't</p> <p>5 be using talc, should be using cornstarch, right?</p> <p>6 A. I see what they're saying here.</p> <p>7 Q. Okay. And in fact, J&J is</p> <p>8 commenting on this and saying, "We may want to</p> <p>9 accelerate or switch from -- a shift from talc to</p> <p>10 cornstarch," correct?</p> <p>11 A. I don't know what J&J is saying</p> <p>12 because I have not studied this.</p> <p>13 Q. Well, it actually says it. It says:</p> <p>14 In light of this "depending on how</p> <p>15 widely this gets publicized, you may want to build</p> <p>16 this into your forecast thinking (stay</p> <p>17 conservative on the talc business, accelerated</p> <p>18 shift from talc to cornstarch)."</p> <p>19 Correct?</p> <p>20 A. I see what's written. I can't</p> <p>21 divine exactly what they were meaning.</p> <p>22 Q. Because you didn't look, did you?</p> <p>23 A. I -- I don't recall whether I saw</p> <p>24 this or didn't see this.</p>

<p style="text-align: right;">Page 254</p> <p>1 Q. Okay. In fact, you know -- do you 2 know that in 1999 to 2000 the company considered 3 and rejected switching to talc and cornstarch for 4 reasons that we have not been able to figure out? 5 A. I was -- I did not study a single 6 decision. 7 Q. All right. 8 A. I was studying J&J's pattern of 9 actions over decades. 10 Q. Well, we've talked about pattern 11 of -- pattern of publications over decades. 1994, 12 1992, 1999, this in 1999, 2004 were the Mills, and 13 2013 Terry. 14 This wasn't one isolated moment, 15 this was a continuum, correct? 16 A. It was years. I don't know that 17 it's a continuum. 18 Q. All right. Keep going to the next 19 page of this. It says: 20 A doctor from the Illinois Division 21 of the American Cancer Society confirms this 22 position, states: "The American Cancer Society 23 currently recommends that women who wish to use 24 powder use a cornstarch-based powder and avoid</p>	<p style="text-align: right;">Page 256</p> <p>1 Q. -- and the findings of this paper, 2 he offers the following advice to women who wish 3 to use feminine powder: 'If a person is concerned 4 about the risk of ovarian cancer from the use of 5 talc-containing powders, I think 6 cornstarch-containing powder is a safe 7 alternative.' 8 Correct? 9 A. I see that. 10 Q. Okay. And so now we've seen in this 11 time frame between multiple people, organizations, 12 raising the question as to whether or not 13 cornstarch is a safe alternative in light of what 14 was being talked about with ovarian cancer, not 15 asbestos, ovarian cancer. True? 16 A. You have represented that there are 17 many studies. 18 Q. Well, I haven't represented. I've 19 shown them to you. True? 20 A. You have. Well, that's what I 21 meant. 22 Q. Okay. And you hadn't even -- you 23 hadn't considered those in drafting your report, 24 have you?</p>
<p style="text-align: right;">Page 255</p> <p>1 talc powders at this time." 2 You see that? 3 A. I see that. 4 Q. Okay. Goes on. Next paragraph it 5 says: 6 "Until more research is conducted, 7 it is prudent to avoid using talc powder in the 8 genital area. There are a number of 9 cornstarch-based powders on the market, however, 10 which offer women a safe alternative." 11 Correct? 12 A. Yeah. Somehow I've lost that. 13 MR. EWALD: Go to the very 14 next one further down. 15 THE WITNESS: Right there? 16 MR. EWALD: Right there. 17 THE WITNESS: Oh, okay. Got 18 it. 19 Yeah, I see that. 20 BY MR. TISI: 21 Q. Okay. And if you skip down below, 22 there's a sentence that says -- it says: 23 "Based on Dr. Whysner's expertise -- 24 A. Yeah.</p>	<p style="text-align: right;">Page 257</p> <p>1 A. I am not looking at the systematic 2 literature. 3 Q. Okay. Let's look at the next one 4 here. 5 In fact, your own institutions were 6 talking about cornstarch as an alternative to 7 talc, were they not? 8 A. I have no idea what people were 9 talking about. 10 Q. You haven't looked at what the 11 University of Michigan and University of Johns 12 Hopkins was saying at the time? 13 A. I -- I mentioned that I didn't do a 14 systematic analysis of the research. 15 Q. Well, let's look at what was being 16 said at the time. Because your report is 17 hindsight, is it not? It's 2020 to 2024, your 18 report was, your analysis in this case, right? 19 You were looking at what happened 20 over time. True? 21 A. It was retrospective. I wouldn't 22 call it hindsight. 23 Q. Okay. Okay. Other people 24 hindsight, but just not you?</p>

<p style="text-align: right;">Page 258</p> <p>1 A. Hindsight is a completely different 2 thing. I did a retrospective analysis. 3 Q. Now, we're talking about things you 4 didn't consider. True? 5 A. Again, as I mentioned, you know, my 6 role was to do a particular thing. 7 MR. TISI: I'm going to show 8 you what University of Michigan where you 9 were. This is Exhibit Number 21. This 10 is University of Michigan. 11 (Document marked for 12 identification as Sutcliffe Exhibit 21.) 13 BY MR. TISI: 14 Q. And this is, I'll represent to you, 15 was from 2019. 16 A. Okay. 17 Q. It says "Risk Factors Genetics and 18 Screening." 19 Do you see that? 20 A. Yes. 21 Q. And it says "Talcum powder" at the 22 bottom. Would you read for the record what it 23 said in 2019? 24 A. "Talcum powder" at the bottom of</p>	<p style="text-align: right;">Page 260</p> <p>1 A. It says "There has been some 2 research proving a slight increased risk for 3 ovarian cancer for women who use talcum powder." 4 Q. And then they compare it to 5 cornstarch, don't they? And what do they say 6 about cornstarch? 7 A. "There is no evidence linking 8 cornstarch powders with any female cancers." 9 Q. Was University of Michigan wrong? 10 A. I don't know whether University of 11 Michigan is wrong or right. 12 What I was studying was J&J and the 13 institutionalized knowledge it had and that it was 14 not -- and what it was doing. 15 Q. Well, one of the things that -- 16 well, what it was doing is the key, right? 17 The institutional knowledge it had. 18 We're talking about the knowledge. True. Okay? 19 I'm asking you what they were doing. 20 What were they doing internally in the company? 21 Now, you saw before in response to 22 the American Cancer Society that there was a 23 discussion about an accelerated switch to 24 cornstarch.</p>
<p style="text-align: right;">Page 259</p> <p>1 what? Sorry. I mean, I -- this doesn't say 2 "talcum powder." 3 MR. EWALD: She was cut off 4 over here. 5 MR. TISI: No. It's right 6 here on the top page. 7 MR. EWALD: No. The top for 8 some reason the printing is different. 9 MR. TISI: Okay. 10 MR. EWALD: Top of the next 11 page. 12 MR. TISI: Thank you. 13 THE WITNESS: "There has been 14 some research proving a slight increased 15 risk for ovarian cancer for women who use 16 talcum powder. There is no evidence 17 linking cornstarch powders with any 18 female cancers." 19 BY MR. TISI: 20 Q. So University of Michigan where you 21 were was saying there's -- there is a slight 22 increase in ovarian cancer in women that's proven 23 by the research, right? Used the word "proof," 24 right?</p>	<p style="text-align: right;">Page 261</p> <p>1 Did you not see that? 2 A. I -- I saw what was written there. 3 I can't divine what was happening there. 4 Q. Because you haven't seen any 5 documents. 6 Have you seen any documents that 7 talked about the switch to cornstarch in that time 8 frame? 9 A. I was not studying the switch to 10 cornstarch. 11 MR. TISI: Okay. Let's look 12 at what Johns Hopkins was saying in 2010 13 in this time frame. 14 (Document marked for 15 identification as Sutcliffe Exhibit 22.) 16 BY MR. TISI: 17 Q. Now, let me just stop here for a 18 minute and talk about Johns Hopkins. 19 Are you familiar with -- do you know 20 Dr. Merlo and Dr. Diette, our experts in this case 21 from your -- do you know who they are? 22 A. No. 23 Q. Okay. They're with the Johns 24 Hopkins School of Public Health as well. They're</p>

<p style="text-align: right;">Page 262</p> <p>1 epidemiologists who have also earned millions of 2 dollars -- 3 A. Uh-huh. 4 Q. -- in connection with this case. 5 A. I admit, I wish I had earned 6 millions of dollars, but that's not true. 7 Q. Okay. Well, you earned almost a 8 million dollars so far? 9 A. Maybe but. 10 MR. EWALD: Objection to form. 11 BY MR. TISI: 12 Q. "Maybe but." 13 \$750,000, right? 14 A. I have no idea. 15 Q. Okay. Well, at this time before -- 16 before Johns Hopkins started being Johns Hopkins 17 Research has been paid millions of dollars overall 18 for -- for talc litigation, let's look at what 19 they were actually saying. Okay? 20 This is from 2010. Look at the -- 21 there's a section on "Talcum powder and asbestos." 22 Can you see what they say? Can you 23 read what they say? 24 A. Where are you talking? I'm sorry.</p>	<p style="text-align: right;">Page 264</p> <p>1 coming from all kinds of corridors about talc and 2 ovarian cancer, correct? 3 MR. EWALD: Objection to form. 4 Go ahead. 5 THE WITNESS: I would agree 6 that studies had been conducted. 7 MR. TISI: Okay. All right. 8 This is probably a good time to take that 9 break. 10 (Whereupon, at 1:08 p.m., a 11 luncheon recess was taken.) 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
<p style="text-align: right;">Page 263</p> <p>1 Q. Second page. 2 A. Okay. 3 Q. Says at the very bottom. 4 A. Okay. It says: 5 "Habitual use of talcum powder on 6 the genital area may increase the risk for ovarian 7 cancer, but the evidence is not strong." 8 Q. Keep going. 9 A. "A study at Harvard Medical School 10 found that using talc this way doubled the risk, 11 but other studies found no increased risk. Some 12 researchers believe that talc may be carcinogenic 13 because it contains particles of asbestos, a known 14 carcinogen. It's been shown that rates of ovarian 15 cancer are higher than normal in women whose jobs 16 expose them to asbestos." 17 Q. Now, would you agree, Doctor, that 18 during this time frame, we've looked at a bunch of 19 documents there was some disruptive ambiguity 20 about talc and ovarian cancer. We looked at a 21 bunch of articles. Now websites, press releases 22 from the American Cancer Society. 23 You agree with me that there was 24 serious questions being raised by all kinds --</p>	<p style="text-align: right;">Page 265</p> <p>1 AFTERNOON SESSION 2 (1:39 p.m.) 3 KATHLEEN M. SUTCLIFFE, PHD 4 called for continued examination and, having been 5 previously duly sworn, was examined and testified 6 further as follows: 7 EXAMINATION (CONTINUED) 8 BY MR. TISI: 9 Q. All right. So let's talk about the 10 World Health Organization and IARC. I don't think 11 there's very many questions I need to ask about 12 this. 13 But you would agree with me that in 14 2006 talc without asbestiform fibers was -- was 15 rated as a possible human carcinogen 2B, correct? 16 A. I need to check on that. 17 So I thought -- let me just check. 18 You're talking about 2010? 19 Q. Well, it's 2010, but the review was 20 in 2006, but fine, use 2010. 21 A. Okay. 22 They published a monograph that 23 evaluated the carcinogenic hazards of talc not 24 containing asbestos fibers and listed perineal use</p>

<p style="text-align: right;">Page 266</p> <p>1 of talc-based baby powder include to be possibly 2 carcinogenic. 3 Q. Okay. And then you know that in 4 2012 talc with asbestiform fibers was categorized 5 as a Category 1, correct? Or do you not know? I 6 didn't see that referred to in your report. 7 A. I don't know that I had that in 8 here. 9 Q. But the World Health Organization 10 never categorized talc as being safe, did they? 11 A. Again, all I know is that the World 12 Health Organization in 19 -- early 1989, early 19 13 -- in 1989 suggested that cosmetic talc doesn't 14 cause cancer of any kind. 15 Q. Okay. Can you keep your voice up, 16 please? I think there are people trying to hear 17 us. 18 MS. TURPIN: I'm having a hard 19 time hearing the witness again. 20 THE WITNESS: I'll speak up. 21 MR. TISI: I asked her to 22 speak up. 23 MS. TURPIN: Thank you. 24 BY MR. TISI:</p>	<p style="text-align: right;">Page 268</p> <p>1 IARC did not say that talc was safe, did it? 2 MR. EWALD: Objection to form. 3 THE WITNESS: IARC -- I can't 4 say what IARC said or didn't say. 5 What I know is that they 6 listed perineal use of talc-based baby 7 powder include 2B. 8 BY MR. TISI: 9 Q. Possibly carcinogenic? 10 A. Correct. 11 Q. And with asbestiform fibers, which 12 you don't know, you weren't provided, you didn't 13 review, is a -- I will represent to you is a 14 Category 1, which is carcinogenic. Okay? 15 So talc is either possibly or in 16 fact carcinogenic according to current -- the 17 then-current classification of talc, according to 18 the IARC, correct? 19 MR. EWALD: Objection to form. 20 THE WITNESS: All I -- all I 21 can say for sure -- I mean, I understand 22 what you're -- what you're saying -- is 23 that in 2006 or 2010, as I reported here, 24 they published a new monograph that</p>
<p style="text-align: right;">Page 267</p> <p>1 Q. So 2000 -- in the mid-2000s, it 2 categorized talc as being a possible human 3 carcinogen, correct? 4 A. In 20 -- in whatever you say, 2009 5 or 2010 they -- 6 Q. Right. 7 A. -- published a monograph, as I 8 mentioned. 9 Q. Right. 10 But the announcement was made in 11 2006. 12 A. Okay. 13 Q. So I'll just -- I think the record 14 will be what the record is. 15 But IARC never said talc was safe, 16 did it? 17 A. They listed it as a group to be 18 possibly carcinogenic. 19 Q. And so my question is: There is a 20 category for being safe, right? A Category 3. 21 It's not Category 3, is it? 22 A. I think Category 3 is not 23 classifiable as to its carcinogenesis. 24 Q. My question is: They were not --</p>	<p style="text-align: right;">Page 269</p> <p>1 evaluated the hazards and they listed 2 this as group 2B. 3 BY MR. TISI: 4 Q. Okay. And now so, again, we're 5 talking about the 2000 -- 1984 with Cramer. We 6 were just kind of talking about 2000 -- '80s, 7 '90s, 2000s, that 30-year period. 8 Did anybody, to your knowledge, ever 9 come out and directly say talc is safe? 10 MR. EWALD: Objection to form. 11 THE WITNESS: I do not recall 12 that language. 13 BY MR. TISI: 14 Q. Okay. 15 A. I know that nobody came out saying 16 that, as we know, as I've said earlier, you know, 17 that talc was -- that there were no conclusive 18 findings. 19 Q. Okay. There's a difference between 20 no conclusive findings and no evidence, right? 21 A. Again, I'm not a toxicologist -- 22 Q. Okay. So let's -- 23 A. -- or I am not an epidemiologist and 24 that was not my --</p>

<p style="text-align: right;">Page 270</p> <p>1 Q. Okay.</p> <p>2 A. My role in this case was different.</p> <p>3 Q. So let's stick with what we know.</p> <p>4 Okay?</p> <p>5 What we know is, nobody ever came</p> <p>6 out and said talc was safe in that time frame,</p> <p>7 other than J&J, correct?</p> <p>8 MR. EWALD: Objection to form.</p> <p>9 THE WITNESS: I --</p> <p>10 MR. EWALD: Go ahead.</p> <p>11 THE WITNESS: Sitting here,</p> <p>12 all I can say is what I know.</p> <p>13 BY MR. TISI:</p> <p>14 Q. Okay.</p> <p>15 A. And what I know is I established</p> <p>16 J&J's institutionalized knowledge and how they</p> <p>17 developed it --</p> <p>18 Q. Okay. Now, answer my --</p> <p>19 A. -- about the safety of its product.</p> <p>20 Q. Okay. So now let's -- let me ask</p> <p>21 you my question now, not your question.</p> <p>22 My question is: Have you ever seen</p> <p>23 anybody come out and say in this time frame from</p> <p>24 1984 -- right now we're talking about the late</p>	<p style="text-align: right;">Page 272</p> <p>1 19 -- late 1990s and there was no causal</p> <p>2 link between talc and ovarian cancer.</p> <p>3 BY MR. TISI:</p> <p>4 Q. Okay. We're going to talk about</p> <p>5 that, but I'm going to ask you the question that</p> <p>6 I'm going to ask you, which is: Can you think of</p> <p>7 a single researcher, organization, regulatory</p> <p>8 authority that said talc was proven to be safe?</p> <p>9 A. I did not study that.</p> <p>10 Q. Okay.</p> <p>11 A. I studied -- I didn't do a</p> <p>12 systematic review of the literature.</p> <p>13 Q. Okay. So now we've talked about</p> <p>14 medical literature. We talked about IARC. Let's</p> <p>15 talk about the FDA since you've wanted to talk</p> <p>16 about it all morning.</p> <p>17 A. Okay.</p> <p>18 Q. Let's talk about the FDA.</p> <p>19 MR. EWALD: Slight</p> <p>20 mischaracterization there. (Laugh).</p> <p>21 MR. TISI: It's all right.</p> <p>22 BY MR. TISI:</p> <p>23 Q. In 1994, you point out on page 62,</p> <p>24 paragraph number 157 that there was a 1994</p>
<p style="text-align: right;">Page 271</p> <p>1 2000s, actually 2000 -- let's put it to today.</p> <p>2 Did anybody ever come out, to your</p> <p>3 knowledge, and say talc is safe? That there are</p> <p>4 no questions about talc, talc is safe?</p> <p>5 A. I was not studying whether or not --</p> <p>6 Q. I didn't ask you a study.</p> <p>7 A. I have to say, I can't answer your</p> <p>8 question because --</p> <p>9 Q. Okay. Fine.</p> <p>10 A. -- that is not something that I was</p> <p>11 studying.</p> <p>12 Q. So you can't say that you have ever</p> <p>13 seen it or not.</p> <p>14 You've told me about all the times</p> <p>15 that talc said there were not conclusive evidence</p> <p>16 that it would cause ovarian cancer, but you're not</p> <p>17 willing to tell me that nobody ever said it was</p> <p>18 safe?</p> <p>19 A. I --</p> <p>20 MR. EWALD: Objection to form.</p> <p>21 Mischaracterizes testimony.</p> <p>22 Go ahead.</p> <p>23 THE WITNESS: I know that FDA</p> <p>24 reviewed the research available in the</p>	<p style="text-align: right;">Page 273</p> <p>1 workshop that was cosponsored by the FDA, correct?</p> <p>2 A. Correct.</p> <p>3 Q. As part of your sensemaking</p> <p>4 framework, that was an important event, correct?</p> <p>5 A. As part of my sensemaking framework,</p> <p>6 it was one data point suggesting -- showing</p> <p>7 exactly how -- how J&J was interacting with the --</p> <p>8 interacting, you know, regularly and with the</p> <p>9 scientific community.</p> <p>10 Q. Well we looked at a lot of other</p> <p>11 data points that you said you hadn't considered,</p> <p>12 but you looked at this one, right?</p> <p>13 We looked at -- we looked at</p> <p>14 Cramer -- Cramer '82, which you did consider. We</p> <p>15 looked at Harlow '92, which is a data point you</p> <p>16 didn't consider. We looked at Mills, which you</p> <p>17 didn't consider. We looked at Cramer '99, which</p> <p>18 you didn't consider.</p> <p>19 We looked at a lot of other things</p> <p>20 you didn't consider, but you did consider the 1994</p> <p>21 conference, right?</p> <p>22 A. The conference is one. It shows</p> <p>23 that J&J --</p> <p>24 Q. Okay.</p>

<p style="text-align: right;">Page 274</p> <p>1 A. -- was taking actions to interact 2 with the scientific community -- 3 Q. Okay. 4 A. -- like it did. And as I said, I 5 did not look at all of the research on ovarian 6 cancer. 7 Q. By the way, we would only know that 8 if we saw your billing records about what you 9 reviewed and when you reviewed it, right? 10 MR. EWALD: Objection to form. 11 THE WITNESS: I do not say 12 exactly what I reviewed. 13 BY MR. TISI: 14 Q. All right. So let me show you a 15 document that was not in your list. 16 Now, according -- actually, could 17 you show me the Carr? 18 I'll represent to you that Carr 19 article just so we can move through this. There 20 was a two-day conference January 31-February 1, 21 1994. 22 Does that sound about right to you? 23 A. I'm not sure what you're talking 24 about.</p>	<p style="text-align: right;">Page 276</p> <p>1 right? The Carr? 2 A. I have to look. Can we look to see? 3 Can I look at something? 4 MR. EWALD: Oh, sure. 5 THE WITNESS: 320. Just to 6 make sure. 7 MR. EWALD: There you are. 8 THE WITNESS: Okay. Thanks. 9 Yep. Yeah. 10 BY MR. TISI: 11 Q. Can you just confirm for me the date 12 of the conference? 13 It's in the Footnote 1. 14 It's Footnote 1, front page. 15 A. Oh, right here. 16 1994. 17 Q. January 31-February 1, 1994, 18 correct? 19 A. Correct. 20 MR. TISI: Now I show you an 21 internal FDA document four days later, 22 which I don't see any reference in your 23 list, Exhibit Number 23 dated February 4, 24 1994.</p>
<p style="text-align: right;">Page 275</p> <p>1 Q. Okay. The ISTRP conference. 2 A. Okay. The ISRTP? 3 Q. Yes. 4 A. Yeah, I don't -- I don't recall. 5 Q. Okay. 6 A. I'd have to look back. 7 MR. TISI: Let me show you. 8 Let me see if I can have this marked. 9 Well, I just have a copy of it. Maybe 10 you can just take a look at it. 11 Look at Footnote Number 1 the 12 record reflect and I'll just -- I don't 13 have it. 14 Do you have a copy? 15 I'm going to show you what 16 I've had marked as Exhibit Number 51, 17 which is the conference. 18 (Document marked for 19 identification as Sutcliffe Exhibit 51.) 20 THE WITNESS: Uh-huh. 21 BY MR. TISI: 22 Q. All I'm going to ask you is the date 23 of the conference. 24 This is the document you reviewed,</p>	<p style="text-align: right;">Page 277</p> <p>1 (Document marked for 2 identification as Sutcliffe Exhibit 23.) 3 BY MR. TISI: 4 Q. Do you see that? 5 A. I do see that, yes. 6 Q. Okay. Does it -- does it not say -- 7 it says "I called the FDA." 8 This is from Stephen Gettings, 9 Director of Toxicology, entitled "Talc Symposium 10 Follow-up." It's a memorandum dated February 4, 11 1994. 12 Do you see that? 13 A. Uh-huh. 14 Q. Would you read to me what it says? 15 A. "They are still in the process of 16 evaluating the information from the meeting but 17 their initial impression is that the possibility 18 of risk (of ovarian cancer) cannot be totally 19 dismissed and may need additional work to answer 20 the question." 21 Q. Okay. So the FDA still had 22 questions about the safety of talc. True? 23 A. I don't know what -- whether they 24 had questions about it. I see what I'm -- what</p>

<p style="text-align: right;">Page 278</p> <p>1 they said, what was said here.</p> <p>2 Q. And the next sentence --</p> <p>3 A. So that's all I can say.</p> <p>4 Q. I'm sorry. I didn't mean to</p> <p>5 interrupt.</p> <p>6 The next sentence it says:</p> <p>7 "In addition, we have received</p> <p>8 information that at least one of our companies has</p> <p>9 received a call from a gynecologist interested in</p> <p>10 conducting further research to the ovarian cancer</p> <p>11 issue."</p> <p>12 A. I see that.</p> <p>13 Q. So two things were happening.</p> <p>14 Number one is, there's contact with the FDA</p> <p>15 saying, "We still have concerns, the issue is not</p> <p>16 off the table," right?</p> <p>17 A. I see what's written here. I can't</p> <p>18 say whether --</p> <p>19 Q. Well, how do you interpret it?</p> <p>20 A. I don't. I see what's written here.</p> <p>21 Q. You don't interpret it at all?</p> <p>22 A. I see what's written here and I</p> <p>23 can't divine what --</p> <p>24 Q. Okay.</p>	<p style="text-align: right;">Page 280</p> <p>1 BY MR. TISI:</p> <p>2 Q. Following that meeting -- you wanted</p> <p>3 to mention FDA a couple times this morning, and I</p> <p>4 told you we'll get to it and I'm keeping my</p> <p>5 promises.</p> <p>6 A. Well, that's good because, you know,</p> <p>7 I can also talk about, you know, the Citizens'</p> <p>8 Petitions or that.</p> <p>9 Q. Oh, I'm going to talk about that</p> <p>10 too.</p> <p>11 A. Oh, that's great.</p> <p>12 Q. I'm going to talk about that too. I</p> <p>13 promise, I'm going to get there.</p> <p>14 A. Okay.</p> <p>15 Q. You can't anticipate my questions.</p> <p>16 You got to answer the questions in the order in</p> <p>17 which I -- which I do it. That's part of the</p> <p>18 process. Okay?</p> <p>19 Now, the FDA, April 17, 1995.</p> <p>20 Here's Exhibit Number 24.</p> <p>21 This is an e-mail -- excuse me -- a</p> <p>22 memo about a communication with John Bailey at the</p> <p>23 FDA, correct?</p> <p>24 A. I need to take a minute to read</p>
<p style="text-align: right;">Page 279</p> <p>1 A. -- was actually said.</p> <p>2 Q. So you are willing to interpret the</p> <p>3 conference that you referenced, but you're not</p> <p>4 willing to -- to interpret a two-sentence</p> <p>5 follow-up memo about that conference?</p> <p>6 A. I am willing to interpret that J&J</p> <p>7 participated in the conference, that they were</p> <p>8 actively interacting with the scientific community</p> <p>9 on these matters.</p> <p>10 Q. And they actively spoke to Dr. -- to</p> <p>11 the FDA and actively found out the FDA still had</p> <p>12 concerns and actively heard that there was</p> <p>13 additional research needed to be done, right?</p> <p>14 They actively heard those things?</p> <p>15 A. I --</p> <p>16 MR. EWALD: Objection to form.</p> <p>17 THE WITNESS: I don't know</p> <p>18 whether they -- I know that what I see</p> <p>19 here on my paper.</p> <p>20 MR. TISI: Let's go to the</p> <p>21 next one. Exhibit Number 42. I'm sorry.</p> <p>22 Exhibit Number 24.</p> <p>23 (Document marked for</p> <p>24 identification as Sutcliffe Exhibit 24.)</p>	<p style="text-align: right;">Page 281</p> <p>1 this.</p> <p>2 Q. Sure.</p> <p>3 A. (Reviews document.)</p> <p>4 Okay.</p> <p>5 Q. Okay. Now, so a couple things from</p> <p>6 this memo. This is -- first of all, you hadn't</p> <p>7 seen the exhibit I showed you before, the</p> <p>8 facsimile, correct? That had not been part of</p> <p>9 your review?</p> <p>10 A. I don't recall whether I saw it or</p> <p>11 didn't see it.</p> <p>12 Q. You didn't see this one either?</p> <p>13 A. I have to say, I don't remember.</p> <p>14 Q. Okay.</p> <p>15 A. As I said, I considered a lot of</p> <p>16 things that are not necessarily in this report.</p> <p>17 Q. Okay. So this is -- well, but you</p> <p>18 did refer to the FDA and that's part of your --</p> <p>19 your issue about, you know, that they were paying</p> <p>20 attention to -- to the FDA, right?</p> <p>21 A. It's not just paying attention, that</p> <p>22 they were interacting and collaborating with the</p> <p>23 FDA --</p> <p>24 Q. Perfect. Let's use your word.</p>

<p style="text-align: right;">Page 282</p> <p>1 A. -- over time.</p> <p>2 Q. Let's use your word. Interactive.</p> <p>3 They spoke to John Bailey at the FDA</p> <p>4 on or about April 15, 1995, correct?</p> <p>5 A. It looks like that it says April 17,</p> <p>6 1995.</p> <p>7 Q. Now, John O'Shaughnessy is listed</p> <p>8 here. You know he's the product liability lawyer</p> <p>9 for J&J.</p> <p>10 You know that, right?</p> <p>11 A. I know he was a lawyer. I don't --</p> <p>12 I don't know much about that.</p> <p>13 Q. He's the head of -- he was the head</p> <p>14 of litigation for Johnson & Johnson. He's at that</p> <p>15 meeting as well.</p> <p>16 In fact, he was on the prior</p> <p>17 e-mail -- the prior facsimile, correct?</p> <p>18 A. I do not -- I don't know.</p> <p>19 Q. In fact, he was at the -- if you</p> <p>20 look at the Carr paper, he was actually there as</p> <p>21 well?</p> <p>22 A. I haven't. I mean --</p> <p>23 Q. Well, take a look.</p> <p>24 I'll just represent to you that he's</p>	<p style="text-align: right;">Page 284</p> <p>1 THE WITNESS: I have no idea</p> <p>2 what -- what --</p> <p>3 BY MR. TISI:</p> <p>4 Q. Okay.</p> <p>5 A. -- people were doing at these</p> <p>6 meetings.</p> <p>7 Q. So J&J was paying attention to the</p> <p>8 FDA, but so were their product liability lawyers.</p> <p>9 True?</p> <p>10 A. I -- I can't say one way or another.</p> <p>11 Q. Okay. So let's talk about this</p> <p>12 1995. This is, of course, comments by FDA's John</p> <p>13 Bailey during a luncheon. It says:</p> <p>14 "He described talc safety as an</p> <p>15 issue that 'is still on the table' and that he</p> <p>16 would move to some action."</p> <p>17 You see that?</p> <p>18 A. I see that.</p> <p>19 Q. The FDA still had concerns even</p> <p>20 after this conference.</p> <p>21 This is now a year later, right?</p> <p>22 A. I see what is said there.</p> <p>23 Q. Well, am I wrong? What's your</p> <p>24 interpretation of that?</p>
<p style="text-align: right;">Page 283</p> <p>1 there.</p> <p>2 A. I have to look.</p> <p>3 Q. It's in the middle of the page.</p> <p>4 Second page.</p> <p>5 A. Okay. Yep. He's there.</p> <p>6 Q. Okay. So their product liability</p> <p>7 lawyers are all over this, aren't they? They're</p> <p>8 at every single meeting. True?</p> <p>9 A. I --</p> <p>10 MR. EWALD: Objection to form.</p> <p>11 Characterization.</p> <p>12 THE WITNESS: I have not</p> <p>13 looked at every single meeting. So I</p> <p>14 can't say anything about it.</p> <p>15 BY MR. TISI:</p> <p>16 Q. Do you know whether or not when the</p> <p>17 first talc ovarian cancer case was filed?</p> <p>18 A. I do not know.</p> <p>19 Q. Would it surprise you that the first</p> <p>20 trial was in 2014, some 20 years after this, that</p> <p>21 their product liability lawyers were involved in</p> <p>22 discussions, correct?</p> <p>23 A. I --</p> <p>24 MR. EWALD: Objection to form.</p>	<p style="text-align: right;">Page 285</p> <p>1 A. You know, he says that it's still on</p> <p>2 the table.</p> <p>3 Q. Okay. Now, it says he refers to the</p> <p>4 Citizens' Petition.</p> <p>5 He says:</p> <p>6 "Finally, he referred to the</p> <p>7 Citizens' Petition letter requesting warnings on</p> <p>8 talc products saying it shows concerns continue</p> <p>9 and the FDA will have to develop a response in the</p> <p>10 future."</p> <p>11 Right?</p> <p>12 A. Where? Can you tell me where that</p> <p>13 is?</p> <p>14 Q. It says "Finally." The third --</p> <p>15 fourth paragraph down:</p> <p>16 "Finally, he --</p> <p>17 A. Okay.</p> <p>18 Q. -- referred to the Cancer Prevention</p> <p>19 Coalition Citizens' Petition requesting warnings</p> <p>20 on all talc products."</p> <p>21 I'm going to talk about that in a</p> <p>22 minute.</p> <p>23 But it says those -- and I'm</p> <p>24 paraphrasing here.</p>

<p style="text-align: right;">Page 286</p> <p>1 It says the concerns -- their</p> <p>2 concerns continue and FDA will have to develop a</p> <p>3 response in the future, correct?</p> <p>4 A. I see what's written.</p> <p>5 Q. Okay. And do you interpret that is</p> <p>6 that there is still concerns in the medical and</p> <p>7 scientific community about the safety of talc?</p> <p>8 A. I see what's written here. I mean,</p> <p>9 looking at the -- at the paragraph above that, you</p> <p>10 know, he said that it's a weak association. It's</p> <p>11 a relatively weak scientific plausibility --</p> <p>12 Q. Right.</p> <p>13 A. -- of association.</p> <p>14 Q. But there's still a concern, right?</p> <p>15 A. I see what's written here.</p> <p>16 Q. Okay. But how do you interpret it?</p> <p>17 You interpret it as being that</p> <p>18 there's -- I mean, they use "concerns continue."</p> <p>19 I mean, am I reading the English incorrect? Do</p> <p>20 you interpret that as being there are continued</p> <p>21 concerns about the safety of talc?</p> <p>22 A. I interpret that J&J is attending to</p> <p>23 the literature and paying attention to what's</p> <p>24 going on in the environment.</p>	<p style="text-align: right;">Page 288</p> <p>1 Have you ever seen --</p> <p>2 A. I --</p> <p>3 Q. I'm not asking you whether there are</p> <p>4 many ways to do it.</p> <p>5 I'm asking you: In your review,</p> <p>6 have you ever seen -- I mean, if a judge -- forget</p> <p>7 about I'm a lawyer.</p> <p>8 If a judge asked you and you were</p> <p>9 sitting in the courtroom right now and said,</p> <p>10 "Doctor, have you ever seen a study where there's</p> <p>11 -- where J&J investigated whether talc can</p> <p>12 migrate?" What would your answer be?</p> <p>13 A. My answer --</p> <p>14 MR. EWALD: Objection.</p> <p>15 Speculation. Argumentative.</p> <p>16 Go ahead.</p> <p>17 THE WITNESS: My answer would</p> <p>18 be that is not what I -- that was not my</p> <p>19 role here. I have not --</p> <p>20 BY MR. TISI:</p> <p>21 Q. I didn't ask you whether it's your</p> <p>22 role.</p> <p>23 A. I have not studied that.</p> <p>24 Q. I'm not asking you whether or not</p>
<p style="text-align: right;">Page 287</p> <p>1 Q. Oh, paying attention again. Okay.</p> <p>2 So let's talk about paying attention.</p> <p>3 They also say:</p> <p>4 "Steve outlined a protocol presented</p> <p>5 by J&J by Ernst Wynder of AHF and ask him to</p> <p>6 invite the Talc Interested Party Task Force to</p> <p>7 join us in sponsoring the study."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Have you ever seen a study that J&J</p> <p>11 did, other than the Gross and Berg one that we</p> <p>12 talked about before that says do more studies?</p> <p>13 A. I have not looked at particular</p> <p>14 studies J&J has done.</p> <p>15 Q. Well, we're talking about other than</p> <p>16 paying attention, we want to talk about actions,</p> <p>17 right? So let's talk about actions.</p> <p>18 Did you ever see any studies that</p> <p>19 J&J ever did on the issue of whether or not talc</p> <p>20 can migrate?</p> <p>21 A. You know, there are many ways that</p> <p>22 organizations can be -- can attend to or be</p> <p>23 involved in what they're concerned of. So.</p> <p>24 Q. How about answering my question now?</p>	<p style="text-align: right;">Page 289</p> <p>1 you studied it.</p> <p>2 You're testifying that J&J paid</p> <p>3 attention and acted appropriately. True?</p> <p>4 A. I -- I am not -- I -- it wasn't just</p> <p>5 paying attention.</p> <p>6 Q. Okay.</p> <p>7 A. I established J&J's, you know,</p> <p>8 institutional knowledge --</p> <p>9 Q. Okay.</p> <p>10 A. -- that was gained over time through</p> <p>11 multiple means, actions and, you know,</p> <p>12 interactions with experts. Interactions with the</p> <p>13 scientific community, like going to this</p> <p>14 conference. Interactions with the FDA,</p> <p>15 collaborating, etc., and it gained its knowledge</p> <p>16 that way.</p> <p>17 Q. Okay. How about gaining --</p> <p>18 corporation's gaining -- can gain knowledge by</p> <p>19 conducting their own studies. True?</p> <p>20 A. They can -- there are many -- as I</p> <p>21 said earlier, there are many ways that</p> <p>22 organizations --</p> <p>23 Q. Okay.</p> <p>24 A. -- can attend to the scientific</p>

<p style="text-align: right;">Page 290</p> <p>1 literature.</p> <p>2 Q. And that would be one of them doing</p> <p>3 their own studies, correct?</p> <p>4 A. That's one of them, but there are</p> <p>5 other means to do it as well.</p> <p>6 Q. Understood. We will talk about the</p> <p>7 others.</p> <p>8 Let's talk about this one. This</p> <p>9 one, doing studies.</p> <p>10 Have you ever seen a study looking</p> <p>11 at the question of whether or not talc can migrate</p> <p>12 by J&J?</p> <p>13 A. Again, I can't say that I have or</p> <p>14 that I haven't.</p> <p>15 Q. Have you ever seen a study, an</p> <p>16 epidemiology study, other than the Gross and Berg</p> <p>17 one?</p> <p>18 A. I replied earlier that I did not do</p> <p>19 a scientific analysis of the ovarian literature.</p> <p>20 Q. That's not the ovarian literature.</p> <p>21 I'm asking whether they ever did a</p> <p>22 study.</p> <p>23 A. Again, I didn't do a scientific --</p> <p>24 Q. I mean, if they didn't do a study,</p>	<p style="text-align: right;">Page 292</p> <p>1 after the -- I'm sorry -- three years after the</p> <p>2 conference that you relied on.</p> <p>3 Have you seen this document before?</p> <p>4 A. You know, I have to say, I don't</p> <p>5 recall.</p> <p>6 Q. Okay.</p> <p>7 A. So I don't remember.</p> <p>8 Q. Okay. This is dated February 10,</p> <p>9 1988 and it's titled "FDA's Cosmetic Program:</p> <p>10 Current Projects and Resources and A Discussion of</p> <p>11 the 'Model' Program."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Now, if you look at page --</p> <p>15 page ending with the Bates number 509.</p> <p>16 Do you see that?</p> <p>17 MR. EWALD: 509 or 609?</p> <p>18 THE WITNESS: 509? I don't</p> <p>19 see any 509.</p> <p>20 MR. TISI: Right here on the</p> <p>21 bottom in the Bates number.</p> <p>22 MR. EWALD: Oh. Sorry. It's</p> <p>23 the number, the one in the middle.</p> <p>24 THE WITNESS: Oh, okay.</p>
<p style="text-align: right;">Page 291</p> <p>1 there's no literature to review, right?</p> <p>2 A. I have not done a systematic</p> <p>3 analysis of the literature.</p> <p>4 Q. That's not literature.</p> <p>5 If the study wasn't done, there's no</p> <p>6 literature.</p> <p>7 A. Again, I don't know what's been done</p> <p>8 or what hasn't been done.</p> <p>9 Q. Perfect. That's the answer.</p> <p>10 You don't know, right?</p> <p>11 A. I have not looked at this. It was</p> <p>12 not something --</p> <p>13 Q. Okay.</p> <p>14 A. -- I investigated.</p> <p>15 MR. TISI: Let's keep going</p> <p>16 with the FDA. Exhibit Number 25, please.</p> <p>17 (Document marked for</p> <p>18 identification as Sutcliffe Exhibit 25.)</p> <p>19 BY MR. TISI:</p> <p>20 Q. Here's a document from the FDA</p> <p>21 itself about its view about talc.</p> <p>22 A. Thank you.</p> <p>23 Q. This is the FDA's Cosmetic Program</p> <p>24 dated February 10, 1988, and this is three years</p>	<p style="text-align: right;">Page 293</p> <p>1 What? This is all 669.</p> <p>2 MR. EWALD: Yeah. Which page?</p> <p>3 Can I see what?</p> <p>4 THE WITNESS: There's no 509.</p> <p>5 MR. TISI: (Indicates).</p> <p>6 MR. EWALD: Yeah. It's</p> <p>7 different than what we have.</p> <p>8 MR. TISI: Okay. Let me see</p> <p>9 if I can get that.</p> <p>10 I have absolutely no idea what</p> <p>11 happened.</p> <p>12 BY MR. TISI:</p> <p>13 Q. Okay. Well, I'm going to give you</p> <p>14 my copy, and I'll have this marked. This is</p> <p>15 Exhibit Number 25.</p> <p>16 And if you go to page 509, mine is</p> <p>17 highlighted so you can actually read what it says.</p> <p>18 Would you read into the record what</p> <p>19 the FDA says?</p> <p>20 A. "Talc is a commonly used ingredient</p> <p>21 used in a variety of cosmetic, drug, and medical</p> <p>22 device preparations. Perineal talc has been</p> <p>23 linked to increased risk of ovarian cancer. FDA</p> <p>24 sponsored a workshop on talc safety in 1994.</p>

<p style="text-align: right;">Page 294</p> <p>1 Additional data obtained since then further 2 suggests a health hazard. CF San is collaborating 3 with CDRH in further assessing possible action on 4 talc." 5 Q. So it looks like the FDA is 6 continuing to look at the issue after 1994 and 7 says that there is further evidence of health 8 hazard. True? 9 A. I can't say one way or another. I 10 see what's here. 11 Q. Okay. 12 A. I mean, that's all -- that's all I 13 can say is I see what's written here. 14 Did you want this back or is this -- 15 Q. But you didn't review that in 16 connection with your report then? 17 A. What I know about the FDA is that, 18 you know, they denied Citizens' Petition in 1994. 19 So, and in 2014. 20 Q. Okay. We're going to get to that, I 21 promise. You wanted to go there, but you're not 22 going to my -- you're not following my questions. 23 You want to go where you want to go. 24 A. I am sorry.</p>	<p style="text-align: right;">Page 296</p> <p>1 document saying there is additional information 2 since the conference you relied on says additional 3 -- that additional evidence gotten since that 4 conference shows it's a health hazard, right? 5 A. I see what's written in the document 6 you showed me. 7 Q. All right. And by the way, do you 8 happen to know whether or not John Bailey actually 9 left the FDA and became a consultant for the talc 10 industry? 11 A. I did not study John Bailey or the 12 FDA. 13 Q. You didn't know that. You didn't 14 know that he left the company and then started 15 making money with the talc industry? 16 A. I have no -- 17 Q. Okay. 18 A. -- insight on that. 19 Q. All right. So now let me go to... 20 So referring to the FDA document. 21 You keep wanting to come to the FDA document, 22 Citizens' Petition. So let's look at it. I told 23 we'd get there. We're going to get there now. 24 Okay?</p>
<p style="text-align: right;">Page 295</p> <p>1 Q. Okay? My question is -- so we just 2 summarize where we were. Conference in 1994, 3 correct? At the end of January, beginning of 4 February, correct? 5 A. The conference? 6 Q. Yes. 7 A. You mean, are you talking about this 8 one? (Indicates). 9 Q. Yes. 10 A. I see, yeah. 11 Q. Three or four days later, FDA 12 interacts with J&J and they say there's still a 13 concern and additional studies ought to be done, 14 correct? 15 A. I see what is written in this memo. 16 That's what I see. 17 Q. Okay. A year later they go to a 18 conference with Dr. Gettings, and Dr. Gettings 19 said the issue is still on the table and 20 additional studies need to be done, right? 21 A. Again, you know, you're linking all 22 these things. I'm just saying, I saw what was 23 in -- in the document. 24 Q. Okay. And now we looked at the FDA</p>	<p style="text-align: right;">Page 297</p> <p>1 MR. TISI: Let's look at 2 Exhibit Number 26, please. 3 (Document marked for 4 identification as Sutcliffe Exhibit 26.) 5 BY MR. TISI: 6 Q. Now, this is a letter to which you 7 were referring where they denied the Citizens' 8 Petition, correct? 9 A. I would have to check the document 10 because you have a different number, I think. 11 Q. Well, I will represent to you this 12 is it. 13 A. Okay. 14 Q. I mean, I will represent to you that 15 this is the Citizens' Petition denial letter. 16 A. Okay. I'm just trying to make sure. 17 That's all. 18 Q. I'm not going to lie to you here. 19 A. Okay. 20 MR. EWALD: It's part of the 21 same document. (Laugh). 22 THE WITNESS: Okay. 23 MR. EWALD: On this he's 24 right. (Laugh).</p>

<p style="text-align: right;">Page 298</p> <p>1 THE WITNESS: I'm really bad</p> <p>2 at looking at these numbers, though.</p> <p>3 MR. TISI: I didn't retype</p> <p>4 anything, believe it or not.</p> <p>5 THE WITNESS: Okay.</p> <p>6 BY MR. TISI:</p> <p>7 Q. All right. So this is the -- so</p> <p>8 this is the -- first of all, this is the Petition</p> <p>9 that's filed in the '90s, right?</p> <p>10 A. I believe that there were two,</p> <p>11 right?</p> <p>12 Q. Right.</p> <p>13 Do you know why it took the FDA</p> <p>14 almost 20 years to respond to this first Citizens'</p> <p>15 Petition and the second one was filed in 2008, six</p> <p>16 years later?</p> <p>17 A. I don't know. I have no idea.</p> <p>18 Q. Do you know whether or not the FDA</p> <p>19 ever met with the American Cancer Coalition</p> <p>20 independently?</p> <p>21 A. I do not recall or have knowledge.</p> <p>22 Q. Do you know that the company took --</p> <p>23 J&J and the PCPC took a whole host of industry</p> <p>24 people to the FDA and met with them separately</p>	<p style="text-align: right;">Page 300</p> <p>1 actually answer a letter?</p> <p>2 MR. EWALD: The company?</p> <p>3 THE WITNESS: The company?</p> <p>4 BY MR. TISI:</p> <p>5 Q. The FDA?</p> <p>6 A. Again, you know, I --</p> <p>7 Q. You're not interested?</p> <p>8 A. It's -- it's not that. My job was a</p> <p>9 bigger job.</p> <p>10 Q. Okay.</p> <p>11 A. To look across decades of what was</p> <p>12 happening --</p> <p>13 Q. Well, I'm looking --</p> <p>14 A. -- and patterns of behavior.</p> <p>15 Q. Okay. I'm looking across decades as</p> <p>16 well. It took two decades to answer this letter.</p> <p>17 Well, let's -- but you have -- you</p> <p>18 know no background about that, do you?</p> <p>19 A. I -- I am not interested in the FDA.</p> <p>20 Q. Okay. Now, one of these -- it says</p> <p>21 in this letter, now it denied the Citizens'</p> <p>22 Petition to require a specific warning. True?</p> <p>23 A. The FDA responded to the Petitions</p> <p>24 noting it "did not find that the data submitted</p>
<p style="text-align: right;">Page 299</p> <p>1 without -- without anybody representing the</p> <p>2 American Cancer Coalition about this -- about</p> <p>3 this --</p> <p>4 A. I do not.</p> <p>5 Q. -- Citizens' Petition?</p> <p>6 A. I do not recall this.</p> <p>7 Q. You don't know any of the</p> <p>8 circumstances at all about how the Citizens --</p> <p>9 this letter came about, do you?</p> <p>10 MR. EWALD: Objection to form.</p> <p>11 Mischaracterizes testimony.</p> <p>12 THE WITNESS: I don't know</p> <p>13 that. I know what I know here. That</p> <p>14 there were the Citizen's Petitions and</p> <p>15 that they were acted on.</p> <p>16 BY MR. TISI:</p> <p>17 Q. I mean, weren't you curious as to</p> <p>18 why it took almost 20 years to respond to a</p> <p>19 Citizens' Petition on a warning letter?</p> <p>20 A. Again, I represented what I -- what</p> <p>21 I found here.</p> <p>22 Q. I mean, aren't you intellectually</p> <p>23 curious as to what took the company almost the</p> <p>24 time it takes to raise a child to adulthood to</p>	<p style="text-align: right;">Page 301</p> <p>1 presented conclusive evidence of a causal</p> <p>2 association between talc use in the perineal area</p> <p>3 and ovarian cancer" and "did not find enough</p> <p>4 additional support at this time for your suggested</p> <p>5 warning label."</p> <p>6 Q. Right.</p> <p>7 So they were responding to a request</p> <p>8 to require a specific warning label, correct?</p> <p>9 A. I'm reading what this was, yes. It</p> <p>10 was -- yes.</p> <p>11 Q. So I mean, have you -- all right.</p> <p>12 So let me actually go to the document.</p> <p>13 Can you go to page 5 of the</p> <p>14 document, please.</p> <p>15 And you actually read this letter</p> <p>16 from cover to cover, not just the portions that</p> <p>17 the lawyers told you to -- the lawyers told you to</p> <p>18 look at.</p> <p>19 You actually, as part of your</p> <p>20 review, actually looked at the letter, right?</p> <p>21 A. First of all, the lawyers never told</p> <p>22 me to review this or that.</p> <p>23 Q. Okay. Perfect. Let's look at it.</p> <p>24 A. So.</p>

<p style="text-align: right;">Page 302</p> <p>1 Q. Let's look at the whole letter.</p> <p>2 A. Then look at the whole letter.</p> <p>3 Q. All right. On page 5, could you</p> <p>4 read the last sentence before it says "Request for</p> <p>5 hearing"?</p> <p>6 A. The last sentence before that?</p> <p>7 Q. The last paragraph.</p> <p>8 A. "While the growing body of evidence</p> <p>9 to support a possible association between genital</p> <p>10 talc exposure and serous ovarian cancer is</p> <p>11 difficult to dismiss, the evidence is insufficient</p> <p>12 for FDA to require as definitive a warning as you</p> <p>13 are seeking."</p> <p>14 Q. So they were responding to a request</p> <p>15 for a very definitive warning. True?</p> <p>16 A. I see what's written here. Again, I</p> <p>17 didn't study this particular.</p> <p>18 Q. So if you go back to the sentence</p> <p>19 before that, it says:</p> <p>20 "The best evidence for an</p> <p>21 association or causal relationship between genital</p> <p>22 talc exposure and ovarian cancer comes from</p> <p>23 epidemiologic data which show a statistically</p> <p>24 significant but modest increased risk of</p>	<p style="text-align: right;">Page 304</p> <p>1 cornstarch?</p> <p>2 A. Again, you know, what -- my role</p> <p>3 here was not to opine on -- on this issue of</p> <p>4 what's happening at the FDA.</p> <p>5 Q. So, so let me get this right.</p> <p>6 J&J -- we've marched through</p> <p>7 literature all day today starting from the early</p> <p>8 1990s talking about talc and association,</p> <p>9 switching to cornstarch, adding warnings.</p> <p>10 You remember all those documents,</p> <p>11 correct?</p> <p>12 A. Yeah, you keep talking about</p> <p>13 switching to cornstarch. I mean, J&J already had</p> <p>14 a cornstarch product.</p> <p>15 Q. Okay. Okay. Discontinuing.</p> <p>16 A. So there was no switching.</p> <p>17 Q. Okay.</p> <p>18 A. I mean, there were two products on</p> <p>19 the market. So just to make that clear.</p> <p>20 Q. Okay. So let me -- you're right.</p> <p>21 So let me just -- let me just amend my question.</p> <p>22 You saw for 20 -- 25 or 30 years</p> <p>23 literature where doctors were publishing in the</p> <p>24 peer-reviewed medical literature that women should</p>
<p style="text-align: right;">Page 303</p> <p>1 epithelial ovarian cancer, especially with serous</p> <p>2 histology, among women with a history of genital</p> <p>3 dusting with talcum powder."</p> <p>4 Correct?</p> <p>5 A. I see that.</p> <p>6 Q. "While the growing body of evidence</p> <p>7 to support a possible association between genital</p> <p>8 talc exposure and serous ovarian cancer is</p> <p>9 difficult to dismiss."</p> <p>10 Do you see that?</p> <p>11 A. I see that.</p> <p>12 Q. They're not giving -- they're not</p> <p>13 saying that talc is safe, are they? They're</p> <p>14 saying a growing body of literature can't be</p> <p>15 dismissed showing an association.</p> <p>16 Am I wrong about that?</p> <p>17 A. I see what's written here --</p> <p>18 Q. Okay.</p> <p>19 A. -- and I see what they said.</p> <p>20 Q. And didn't they say what I said they</p> <p>21 said? Am I misrepresenting that at all?</p> <p>22 A. I'm just -- it says what it says.</p> <p>23 Q. All right. And what did J&J do when</p> <p>24 it got this letter? Did it reformulate the</p>	<p style="text-align: right;">Page 305</p> <p>1 either be warned or they should not use talc in</p> <p>2 their genital area, correct?</p> <p>3 MR. EWALD: Objection.</p> <p>4 Mischaracterizes the documents.</p> <p>5 THE WITNESS: First of all, I</p> <p>6 did not do a systematic review of all the</p> <p>7 studies. There were many studies we</p> <p>8 know. There are many studies, and that</p> <p>9 wasn't my role here.</p> <p>10 My role was to establish that</p> <p>11 J&J's institutional knowledge about the</p> <p>12 safety of its product and to determine</p> <p>13 the extent to which they were taking</p> <p>14 actions that would show that they're a</p> <p>15 company that cares about consumers.</p> <p>16 BY MR. TISI:</p> <p>17 Q. And the institutional knowledge of</p> <p>18 the safety of the products would include documents</p> <p>19 that include the kinds of things I talked -- I</p> <p>20 showed you today that, number one, that people</p> <p>21 were recommending risk mitigation in the '90s and</p> <p>22 2000s. True?</p> <p>23 A. Again, there were multiple studies</p> <p>24 that were going on --</p>

<p style="text-align: right;">Page 306</p> <p>1 Q. I understand.</p> <p>2 A. -- and there was -- there was -- --</p> <p>3 Q. I showed you that but --</p> <p>4 A. -- no change in the regulatory -- in</p> <p>5 regulations that suggested that they should amend</p> <p>6 their -- their knowledge.</p> <p>7 Q. Does the FDA even have the authority</p> <p>8 and do you even know whether the FDA has authority</p> <p>9 to compel them to change to cornstarch?</p> <p>10 A. Number one, they already had a</p> <p>11 cornstarch product on the market.</p> <p>12 Q. To withdraw the product.</p> <p>13 Do you even know what the FDA's</p> <p>14 authority is in that regard?</p> <p>15 A. Again, I'm not a regulatory person</p> <p>16 and that's not what I was studying.</p> <p>17 Q. Well, you just answered my question</p> <p>18 saying there was no change in the regulatory</p> <p>19 environment that would require them to do</p> <p>20 anything.</p> <p>21 A. No, I didn't say --</p> <p>22 Q. I'm responding to you.</p> <p>23 A. -- require them to do anything.</p> <p>24 What I said was to amend -- to make</p>	<p style="text-align: right;">Page 308</p> <p>1 asked you that question?</p> <p>2 A. Because I am an organization</p> <p>3 scientist, and I have studied whether the company</p> <p>4 is responsible.</p> <p>5 And in my view, based on a</p> <p>6 scientific methodology that can be applied across</p> <p>7 disciplines, using thousands of pages of</p> <p>8 documents, I have demonstrated that this company</p> <p>9 has taken actions proactively to understand what's</p> <p>10 in its product and to understand the safety of its</p> <p>11 product.</p> <p>12 And in my view, this company has</p> <p>13 engaged in actions showing that it is a</p> <p>14 responsible company --</p> <p>15 Q. And what actions if I'm a woman --</p> <p>16 A. -- working with the scientific --</p> <p>17 MR. EWALD: No, you asked her</p> <p>18 the question.</p> <p>19 THE WITNESS: No.</p> <p>20 MR. EWALD: When you say the</p> <p>21 judge, the judge wouldn't cut her off in</p> <p>22 the middle of a sentence.</p> <p>23 MR. TISI: Actually, the judge</p> <p>24 would cut this answer off.</p>
<p style="text-align: right;">Page 307</p> <p>1 them to change their institutional knowledge.</p> <p>2 Q. You saw -- you saw -- I showed you</p> <p>3 early on that it's the company, not the FDA, that</p> <p>4 has responsibility, sole responsibility, for the</p> <p>5 safety of cosmetics.</p> <p>6 Did we not see that?</p> <p>7 A. Again, what I studied -- I'm not a</p> <p>8 regulatory requirement -- regulatory person. I'm</p> <p>9 not opining on that.</p> <p>10 I'm opining on the institutional</p> <p>11 knowledge J&J had over time and how it developed</p> <p>12 it using a scientific methodology and a conceptual</p> <p>13 framework, sensemaking, and I have demonstrated</p> <p>14 that J&J actively pursued knowledge about its --</p> <p>15 the safety of its product over time.</p> <p>16 Q. Okay. Obviously, if we were in</p> <p>17 court and the judge asks you, Judge, what is your</p> <p>18 -- "Doctor, what is your opinion and why are you</p> <p>19 even relevant to this case?" What would you say?</p> <p>20 A. I am relevant --</p> <p>21 MR. EWALD: Objection.</p> <p>22 THE WITNESS: Sorry.</p> <p>23 BY MR. TISI:</p> <p>24 Q. What would you say if the judge</p>	<p style="text-align: right;">Page 309</p> <p>1 MR. GOLOMB: He probably</p> <p>2 would.</p> <p>3 MR. TISI: He probably would,</p> <p>4 but go ahead.</p> <p>5 THE WITNESS: Go ahead. It's</p> <p>6 obviously not what the judge is going to</p> <p>7 say.</p> <p>8 MR. TISI: I thought she was</p> <p>9 -- I actually thought she was done.</p> <p>10 BY MR. TISI:</p> <p>11 Q. But go ahead. I want you to</p> <p>12 continue to tell me why you think you are</p> <p>13 relevant.</p> <p>14 A. I am relevant because I have studied</p> <p>15 organizations. I understand organizational</p> <p>16 behavior. I have done it for 40 years.</p> <p>17 And, again, I have done a systematic</p> <p>18 analysis reviewing thousands of pages, hundreds,</p> <p>19 you know, I don't know how many pages of</p> <p>20 documents.</p> <p>21 I have used multiple sources of</p> <p>22 evidence to demonstrate that the company has</p> <p>23 engaged in actions to actively pursue knowledge,</p> <p>24 scientific knowledge, regarding the safety of its</p>

<p style="text-align: right;">Page 310</p> <p>1 product.</p> <p>2 Q. Okay. Now, when I was asking you if</p> <p>3 I am my client, one of my clients, I asked you</p> <p>4 what actions did you do to actually help me</p> <p>5 understand the potential risk of ovarian cancer</p> <p>6 before I took -- I used my talc Johnson's Baby</p> <p>7 Powder in my underwear for 20 years, what would</p> <p>8 you tell me that J&J did for me?</p> <p>9 A. Again, I am studying J&J's</p> <p>10 institutional knowledge, how they developed it</p> <p>11 over time, and I am not an epidemiologist. I have</p> <p>12 not -- I have not looked at this case with that.</p> <p>13 Q. Okay. But you would agree with me</p> <p>14 that the FDA said that the evidence demonstrating</p> <p>15 talc and ovarian cancer there's association was</p> <p>16 difficult to -- what's the phrase? -- is difficult</p> <p>17 to dismiss?</p> <p>18 MR. EWALD: Possible</p> <p>19 association, something like that.</p> <p>20 BY MR. TISI:</p> <p>21 Q. Is difficult to dismiss?</p> <p>22 MR. EWALD: Objection to form.</p> <p>23 THE WITNESS: I --</p> <p>24 MR. EWALD: Mischaracterizes</p>	<p style="text-align: right;">Page 312</p> <p>1 J&J do?</p> <p>2 A. Again, I am not studying one single</p> <p>3 decision or action. I have looked at J&J's</p> <p>4 pattern of actions over time.</p> <p>5 Q. Okay. Then let's be -- let's be</p> <p>6 clear.</p> <p>7 From 2014 on, for the next 15 years</p> <p>8 it was on the market or 10 years it was on the</p> <p>9 market, could you do me a favor and tell me at any</p> <p>10 point during that time what FD -- what J&J did for</p> <p>11 the benefit of my clients?</p> <p>12 MR. EWALD: Objection to form.</p> <p>13 Speculation. Ambiguous.</p> <p>14 BY MR. TISI:</p> <p>15 Q. What did J&J do? You said you're</p> <p>16 not looking at any specific period of time. I'm</p> <p>17 giving you a full decade. Tell me what J&J did.</p> <p>18 A. J&J --</p> <p>19 MR. EWALD: Are you talking --</p> <p>20 I'm sorry. Vague and ambiguous. Are you</p> <p>21 saying for your clients was the last</p> <p>22 question? Generally for talc? For</p> <p>23 America? For United States? What?</p> <p>24 BY MR. TISI:</p>
<p style="text-align: right;">Page 311</p> <p>1 the document. Go ahead.</p> <p>2 MR. TISI: No, I'll read it.</p> <p>3 MR. EWALD: Go ahead and read</p> <p>4 it.</p> <p>5 BY MR. TISI:</p> <p>6 Q. "While the growing body of</p> <p>7 evidence -- growing body of evidence to support a</p> <p>8 possible association between genital talc exposure</p> <p>9 and ovarian cancer is difficult to dismiss."</p> <p>10 Do you see that?</p> <p>11 MR. EWALD: "Serous ovarian</p> <p>12 cancer." You left out that word.</p> <p>13 BY MR. TISI:</p> <p>14 Q. Do you see that?</p> <p>15 A. I see the sentence that starts:</p> <p>16 "While the growing body of evidence</p> <p>17 to support a possible association between genital</p> <p>18 talc exposure and serous ovarian cancer is</p> <p>19 difficult to dismiss, the evidence is insufficient</p> <p>20 for FDA to require as definitive a warning as you</p> <p>21 are seeking."</p> <p>22 Q. What did J&J do when it got this</p> <p>23 letter that said that there was a growing body of</p> <p>24 evidence that was difficult to dismiss? What did</p>	<p style="text-align: right;">Page 313</p> <p>1 Q. Generally.</p> <p>2 A. All right.</p> <p>3 Q. I'm asking: What did they do for</p> <p>4 the benefit of women who were using this product</p> <p>5 in the face of the growing evidence that was</p> <p>6 difficult to dismiss? What did J&J do?</p> <p>7 A. Again, that, my role in this case</p> <p>8 was not to look at individual actions J&J is</p> <p>9 doing.</p> <p>10 Q. You can't --</p> <p>11 A. J&J has been interacting with the</p> <p>12 scientific community.</p> <p>13 Q. Okay.</p> <p>14 A. It's been interacting with -- with</p> <p>15 various entities. It's been providing input and</p> <p>16 insight to other organizations.</p> <p>17 Q. Was J&J interacting with the</p> <p>18 scientific community to ensure the safety of a</p> <p>19 product or to influence the scientific community</p> <p>20 to go its way?</p> <p>21 MR. EWALD: Objection to form.</p> <p>22 Compound question.</p> <p>23 THE WITNESS: It was -- do</p> <p>24 you have a specific example you might</p>

<p style="text-align: right;">Page 314</p> <p>1 give me?</p> <p>2 BY MR. TISI:</p> <p>3 Q. Yes.</p> <p>4 What was the purpose of interacting</p> <p>5 -- what was the purpose of the company interacting</p> <p>6 with scientists? Was it to really understand the</p> <p>7 question, or was it to have them say that talc was</p> <p>8 safe?</p> <p>9 MR. EWALD: Objection to form.</p> <p>10 BY MR. TISI:</p> <p>11 Q. Defending talc. What was their --</p> <p>12 what was their goal?</p> <p>13 A. I can't answer that question.</p> <p>14 Q. Okay.</p> <p>15 A. It's way too general.</p> <p>16 Q. Okay. So you don't know whether</p> <p>17 they -- wouldn't it be important for sensemaking</p> <p>18 to understand what J&J's goals were?</p> <p>19 MR. EWALD: Objection to form.</p> <p>20 THE WITNESS: Again, if you</p> <p>21 have a specific question or instance you</p> <p>22 want me to answer, I'm happy to do that.</p> <p>23 BY MR. TISI:</p> <p>24 Q. Well, every time I ask you for a</p>	<p style="text-align: right;">Page 316</p> <p>1 report as well?</p> <p>2 A. I do, yeah.</p> <p>3 Q. Okay. This is a document dated</p> <p>4 September 17, 1997, correct?</p> <p>5 A. Right. I need to review this</p> <p>6 because I know that there's -- that there's some</p> <p>7 stuff that relates to this but --</p> <p>8 MR. GOLOMB: I'm sorry. I</p> <p>9 didn't hear your answer.</p> <p>10 THE WITNESS: No, I said I</p> <p>11 need to review this.</p> <p>12 MR. GOLOMB: But you said</p> <p>13 something else. The stuff that because.</p> <p>14 THE WITNESS: Because I need</p> <p>15 to review the whole thing. The whole</p> <p>16 letter.</p> <p>17 BY MR. TISI:</p> <p>18 Q. Well, I'm not going to ask about the</p> <p>19 whole letter. I'm going to ask you about one</p> <p>20 paragraph. So I'm going to ask you --</p> <p>21 A. Yeah, but I think it's important to</p> <p>22 review the whole letter.</p> <p>23 Q. Well, you didn't review it before</p> <p>24 today? It's actually cited in your report.</p>
<p style="text-align: right;">Page 315</p> <p>1 specific instance, your answer is, I'm not looking</p> <p>2 at something at a particular point in time.</p> <p>3 When I ask you something generally,</p> <p>4 you say you want a specific instance. I don't</p> <p>5 really know how to approach asking you questions.</p> <p>6 MR. EWALD: Is that a</p> <p>7 question?</p> <p>8 MR. TISI: Yeah.</p> <p>9 BY MR. TISI:</p> <p>10 Q. I mean, you tell me. Can you think</p> <p>11 of what was the goal of J&J in interacting with</p> <p>12 the authorities?</p> <p>13 A. What I have seen over time is that</p> <p>14 J&J was trying to provide factually accurate</p> <p>15 information to the community.</p> <p>16 MR. TISI: Okay. Well, let's</p> <p>17 take a look at what it was representing.</p> <p>18 Let's look at the Wehner letter that you</p> <p>19 referred to. Let's look at Exhibit</p> <p>20 Number 27.</p> <p>21 (Document marked for</p> <p>22 identification as Sutcliffe Exhibit 27.)</p> <p>23 BY MR. TISI:</p> <p>24 Q. You refer to this document in your</p>	<p style="text-align: right;">Page 317</p> <p>1 A. I did review it.</p> <p>2 Q. So let's --</p> <p>3 MR. EWALD: She can take the</p> <p>4 time to review this page letter.</p> <p>5 MR. TISI: Then let's go off</p> <p>6 the record.</p> <p>7 MR. EWALD: No, let's not do</p> <p>8 that. When Kessler got up to look at his</p> <p>9 binders and review something, did we go</p> <p>10 off the record? No.</p> <p>11 BY MR. TISI:</p> <p>12 Q. Okay. Go ahead. Go ahead. Let's</p> <p>13 not waste time.</p> <p>14 MR. EWALD: Take your time.</p> <p>15 BY MR. TISI:</p> <p>16 Q. No, don't take your time. Read the</p> <p>17 letter.</p> <p>18 MR. EWALD: Don't let him rush</p> <p>19 you.</p> <p>20 Are you going to rush her?</p> <p>21 MR. TISI: Yes, I'm going to</p> <p>22 rush her.</p> <p>23 MR. EWALD: Okay. Don't let</p> <p>24 him rush you.</p>

<p style="text-align: right;">Page 318</p> <p>1 THE WITNESS: Okay. (Laugh). 2 (Reviews document.) 3 Okay. 4 BY MR. TISI: 5 Q. Okay. Have you had a chance to 6 fully read the letter? 7 A. Yes, I think so. 8 Q. And this is a letter you've seen 9 before, correct? 10 A. Yes. 11 Q. Okay. First of all, it says you 12 can't -- he says -- Wehner, who is a consultant 13 for J&J, says you can't say that there's no 14 evidence of migration. True? 15 MR. EWALD: Where does he say? 16 MR. TISI: I didn't say. 17 THE WITNESS: Where are you 18 pointing to? 19 BY MR. TISI: 20 Q. In the second -- the first full 21 paragraph. 22 He says you cannot say there are 23 studies that support the translocation of talc 24 into the ovaries. True?</p>	<p style="text-align: right;">Page 320</p> <p>1 "This statement is also inaccurate, 2 to phrase it euphemistically. At that time there 3 had been about 9 studies (more by now) published 4 in the open literature that did show a 5 statistically significant association between 6 hygienic talc use and ovarian cancer." 7 Correct? 8 A. I see that, yes. 9 Q. Okay. "Anybody who denies this 10 risks that the talc industry will be perceived by 11 the public like it perceives the cigarette 12 industry: denying the obvious in the face of all 13 evidence to the contrary." 14 Do you see that? 15 A. I see that. 16 Q. Am I lying exactly what it says? 17 A. I see what it says. 18 Q. "This would be particularly tragic." 19 You see that? 20 A. Yes. 21 Q. Okay. And so the question that I 22 have for you is J&J -- 23 MR. EWALD: Do you want to 24 finish the rest of the sentence?</p>
<p style="text-align: right;">Page 319</p> <p>1 A. (Reviews document.) 2 I'm, you know, I'm really bad. 3 Q. Actually, let me withdraw -- let me 4 withdraw that question. Let me go to the main 5 reason why I want to use this. 6 It says: 7 "The response statement dated 8 November 17, 1994 -- 9 MR. EWALD: Second page? 10 MR. TISI: Second page. 11 THE WITNESS: Yes, I got it. 12 BY MR. TISI: 13 Q. -- is just as bad." 14 "The second sentence in the third 15 paragraph reads: 16 "The workshop" -- meaning 1994 17 ISTRP workshop -- "concluded that, although some 18 of these studies suggested a weak association 19 might exist, when taken together, the results of 20 the studies are insufficient to demonstrate any 21 real association." 22 Do you see? So far so good, right? 23 A. Yeah. 24 Q. Goes on to say:</p>	<p style="text-align: right;">Page 321</p> <p>1 MR. TISI: No, I'm not going 2 to. 3 MR. EWALD: All right. 4 MR. TISI: You can complete it 5 if you would like. 6 MR. EWALD: Okay. 7 BY MR. TISI: 8 Q. So he's saying substantively you 9 cannot say that there's no association. True? 10 A. What he was saying is that, you 11 know, we needed -- that we need to rewrite -- what 12 he's saying is what he said here, which includes 13 the fact that he said "this would be a 14 particularly tragic misperception in view of the 15 fact that the industry does have powerful valid 16 arguments to support its position." 17 Q. Right. 18 But didn't say that the evidence was 19 conclusive, did he? 20 A. Again, he said what he said. 21 Q. All right. So we've gone through a 22 lot of documents now. Okay? We're not taking one 23 point in time. We're not taking one data point. 24 A. Uh-huh.</p>

<p style="text-align: right;">Page 322</p> <p>1 Q. We're looking -- we looked at 2 documents today from the medical and scientific 3 community, from IARC, from FDA, internal 4 consultant, okay, to J&J. 5 Is there any evidence that you have 6 seen over this 20 or 30 period time at any time -- 7 ah, you're about ready to answer me and I 8 haven't -- I haven't finished the question. 9 A. No. I'm waiting to hear evidence 10 about what. 11 Q. Okay. Evidence that the company sat 12 down internally and said, "You know what? We have 13 valid arguments that are outlined here by 14 Dr. Wehner but, you know, on balance, we ought to 15 discontinue talc." 16 Did you ever see that discussion? 17 A. Again, my role was to do something 18 different. I am not studying whether J&J wanted 19 to discontinue talc. 20 Q. I didn't ask you whether they 21 wanted. 22 A. Again, I did what I did. 23 Q. I'm not asking you what -- I'm 24 asking did you see in your review of the thousands</p>	<p style="text-align: right;">Page 324</p> <p>1 (Reviews document.) 2 I may have. I don't remember 3 whether I did or not. 4 Q. You don't know? 5 A. You know, it kind of looks familiar, 6 but I don't remember. 7 Q. Okay. It's a letter from the 8 American Cancer Coalition to Ralph Larson, the CEO 9 of Johnson & Johnson, correct? 10 A. That's what it says. 11 Q. Okay. First of all, in your review 12 of the literature, of the documents, have you ever 13 seen any response to this letter by J&J to the 14 American Cancer Prevention Coalition? 15 A. I don't recall one way or another. 16 Q. It says -- it says that the -- let's 17 just go to the second page. It says: 18 "Women have the inarguable right to 19 know of this information." And I'll just -- about 20 talc and ovarian cancer. 21 "The Cancer Prevention Coalition 22 urges you to immediately withdraw your talc 23 products from the market and substitute them with 24 a safer alternative, such as cornstarch. At the</p>
<p style="text-align: right;">Page 323</p> <p>1 of documents you reviewed any time where the 2 company sat down and said, "We want to take an 3 objective look at this. We're concerned about 4 safety and we're concerned about our product." 5 Did you ever see that? 6 A. Again, my -- my role in this case 7 was to do what I've said several times. 8 Q. And from an operational standpoint, 9 you never saw anybody sit down and say, "We ought 10 to discontinue talc," did you? 11 A. Again, my role was to do something 12 completely different. 13 MR. TISI: Let me show you 14 another -- actually, let me just skip 15 that. Actually, let me show you Number 16 28. 17 (Document marked for 18 identification as Sutcliffe Exhibit 28.) 19 BY MR. TISI: 20 Q. This is Exhibit Number 28. A letter 21 from 1994 from the Cancer Prevention Coalition not 22 to the FDA but to J&J. 23 Have you seen this letter before? 24 A. Let me see.</p>	<p style="text-align: right;">Page 325</p> <p>1 very minimum, we urge Johnson & Johnson to label 2 its talcum powder products with information about 3 the ovarian cancer risk they pose." 4 You see that? 5 A. I see that. 6 Q. Now, in the context of all that 7 we've been discussing today and your opinions that 8 J&J had acquired information, that they as an 9 organization cared about safety, had you ever seen 10 any internal analysis about what -- whether there 11 should be a discontinuation of talc or warning in 12 response to this letter? 13 A. I do not. I don't have the ins and 14 outs of this letter. 15 Q. I'm not asking you the ins and outs. 16 A. Uh-huh. 17 Q. I'm asking you: Had you ever seen 18 anything doing -- evaluating what Dr. Epstein is 19 asking the company -- the CEO of the company to 20 do? 21 A. Again, I go back to what I did, and 22 what my role in this case was. 23 Q. Okay. So the answer is you don't -- 24 you don't remember?</p>

<p style="text-align: right;">Page 326</p> <p>1 A. The answer is, is that I examined 2 J&J's pattern of activities over decades and the 3 extent to which they were very active in seeking 4 scientific knowledge about the safety of its 5 product. And in my view, J&J undertook actions 6 that demonstrated that they cared about the 7 well-being of their consumers. 8 Q. Very active in seeking scientific 9 knowledge -- 10 A. Correct. 11 Q. -- about its product. 12 Okay. I wrote that down. 13 So that's your opinion. They were 14 very active in seeking scientific knowledge about 15 its product. 16 That's what you said, right? 17 A. My opinions are all stated in my 18 report. 19 Q. That's what you just said. 20 Am I not wrong? 21 A. I -- I said that, but my opinions -- 22 Q. Okay. 23 A. -- are specifically noted in my 24 report.</p>	<p style="text-align: right;">Page 328</p> <p>1 results." 2 Okay? 3 A. I see that. 4 Q. J&J study, right? J&J-sponsored 5 study? 6 A. Supported it. I don't know what -- 7 if there's a difference between support and 8 sponsor. 9 Q. Fine. It says what it says. 10 A. Yeah, it says what it says. 11 Q. Do you know -- did you look and see 12 whether or not J&J actually was -- there was 13 actually a proposal to do a definitive study that 14 would show the safety of talc? 15 MR. EWALD: Objection to form. 16 THE WITNESS: I -- that wasn't 17 the focus of my analysis. 18 MR. TISI: Okay. I'd like to 19 show you Exhibit Number 29. 20 (Document marked for 21 identification as Sutcliffe Exhibit 29.) 22 BY MR. TISI: 23 Q. By the way, just remind me again. 24 You said you were paid yourself</p>
<p style="text-align: right;">Page 327</p> <p>1 Q. Let's talk about something that 2 whether the company was very active in seeking 3 scientific knowledge about its product. 4 I showed you the 1994 study that was 5 sponsored by J&J by Gross and Berg. 6 Do you remember that study? Exhibit 7 Number -- Exhibit Number 16. 8 A. You've shown me lots of studies. 9 MR. TISI: Okay. Pull that 10 one out if you don't mind. 11 Thank you, counsel. 12 MR. EWALD: There you go. 13 THE WITNESS: Thank you. 14 BY MR. TISI: 15 Q. You remember that study, right? 16 A. There are a lot of studies in there, 17 as I -- 18 Q. At the very end, this is a study 19 that was sponsored by J&J. They said -- we talked 20 about this. It says: 21 "The results of the meta-analyses do 22 suggest the possibility of an increased risk of 23 ovarian cancer due to perineal talc. Further 24 research in this area is warranted by these</p>	<p style="text-align: right;">Page 329</p> <p>1 between 4 and \$500,000 to look at this case? 2 A. No. What I said was that I will 3 have spent by the end of next week between 400 and 4 500 hours. 5 Q. 500,000. How much -- how much money 6 have you made in this case? 7 MR. EWALD: You say "this 8 case." What you are you referring to? 9 THE WITNESS: I -- 10 MR. TISI: The J&J Talc 11 Litigation. 12 THE WITNESS: As I said, I 13 don't know. 14 BY MR. TISI: 15 Q. I thought you said 4 or 500 -- 4 or 16 500 hours times about a thousand -- on average a 17 thousand dollars an hour? 18 A. Okay. 19 Q. That's about \$500,000? 20 A. Maybe and it's probably less than 21 that. 22 Q. Okay. About \$500,000? 23 A. I don't recall specifically. 24 Q. About \$500,000?</p>

<p style="text-align: right;">Page 330</p> <p>1 A. Uh-huh.</p> <p>2 Q. Let's be conservative and say</p> <p>3 \$400,000.</p> <p>4 A. Okay.</p> <p>5 Q. Okay?</p> <p>6 MR. EWALD: Just so the record</p> <p>7 is clear, you're talking about all of J&J</p> <p>8 talc litigation that she's worked on, not</p> <p>9 just this MDL action over the last two</p> <p>10 months?</p> <p>11 THE WITNESS: Right.</p> <p>12 MR. TISI: Yes.</p> <p>13 MR. EWALD: Okay.</p> <p>14 BY MR. TISI:</p> <p>15 Q. Okay now, here's a document dated</p> <p>16 November -- excuse me -- January 24, 1995 entitled</p> <p>17 "Proposal for New Talc Study."</p> <p>18 Do you see that?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Have you seen this document before?</p> <p>21 A. I don't recall.</p> <p>22 Q. Okay. And it says:</p> <p>23 "This recommends that J&J sponsor a</p> <p>24 new, highly structured epidemiology study focused</p>	<p style="text-align: right;">Page 332</p> <p>1 "What we learn" from the study</p> <p>2 that's being proposed. It says the study that's</p> <p>3 being proposed for J&J will be comprehensive.</p> <p>4 You see the word "comprehensive"?</p> <p>5 A. I see "will be more comprehensively</p> <p>6 study the possibility by."</p> <p>7 Q. Actually, let's go up to the</p> <p>8 sentence.</p> <p>9 It says we -- we -- okay.</p> <p>10 "Hopkins and I met with the group</p> <p>11 and upon detailed review of the protocol are</p> <p>12 impressed by the proposed study."</p> <p>13 Do you see that?</p> <p>14 A. I -- I see the sentence.</p> <p>15 Q. Okay. "Since then, I've had</p> <p>16 feedback from Marjorie, Bill Ashton, and Steve</p> <p>17 Phillips. We believed it is a well-controlled,</p> <p>18 potentially significant study which should replace</p> <p>19 all others as the definitive treatise on this</p> <p>20 issue."</p> <p>21 Do you see that?</p> <p>22 A. I see what it says.</p> <p>23 Q. Okay. The study will more</p> <p>24 comprehensively -- the proposed study to J&J --</p>
<p style="text-align: right;">Page 331</p> <p>1 to examine the possibility that cosmetic talc use</p> <p>2 can lead to increased risk of ovarian cancer."</p> <p>3 Do you see that?</p> <p>4 A. I see that.</p> <p>5 Q. Okay. And this is a recommendation,</p> <p>6 internal recommendation by J&J to do that study,</p> <p>7 correct?</p> <p>8 A. It -- it looks like this is --</p> <p>9 that's what it says this recommends.</p> <p>10 Q. Okay. And actually the next two</p> <p>11 sentence -- two paragraphs down, it reports on the</p> <p>12 Harlow study that we talked about before. It</p> <p>13 says:</p> <p>14 "Harlow reported an odds ratio of</p> <p>15 1.5, but also identified a high application rate</p> <p>16 subset of subjects which had a 2.8 odds ratio.</p> <p>17 Harlow described this group as having a threefold</p> <p>18 risk of getting ovarian cancer."</p> <p>19 You see that?</p> <p>20 A. I see the paragraph that you're</p> <p>21 citing to.</p> <p>22 Q. Okay. And it says "What we will</p> <p>23 learn."</p> <p>24 At the bottom it says:</p>	<p style="text-align: right;">Page 333</p> <p>1 study the epidemiology of talc and ovarian cancer.</p> <p>2 You see that?</p> <p>3 A. I see the sentence you're pointing</p> <p>4 to.</p> <p>5 Q. So what is being described, the</p> <p>6 adjectives used by J&J for this proposed study, is</p> <p>7 a new, highly structured, well-controlled,</p> <p>8 significant, comprehensive study that should</p> <p>9 replace all others as the definitive treatise on</p> <p>10 this issue?</p> <p>11 A. I see what's been written here.</p> <p>12 Q. Okay. And if you look at the second</p> <p>13 page, it says the costs of that study is \$398,000.</p> <p>14 Do you see that?</p> <p>15 A. I see that.</p> <p>16 Q. That's less money than you've been</p> <p>17 paid to sit here -- to sit here and give opinions</p> <p>18 about behavioral -- organizational behavior,</p> <p>19 correct?</p> <p>20 A. I see what the number is here.</p> <p>21 Q. Okay. And do you know whether or</p> <p>22 not J -- and, oh, if you look at the cost and</p> <p>23 timing, it says the study would require two years</p> <p>24 to complete.</p>

<p style="text-align: right;">Page 334</p> <p>1 Do you see that?</p> <p>2 A. I see what it says.</p> <p>3 Q. So this study if initiated -- let's</p> <p>4 give them a year. Let say January 1995. Let's</p> <p>5 give them a full year to get up.</p> <p>6 It would be two years to do. This</p> <p>7 study would have been done by 1998. Give you two</p> <p>8 years, plus -- plus a year just to be generous,</p> <p>9 right?</p> <p>10 A. I see what is said here, I mean.</p> <p>11 Q. All right. So they had a proposal</p> <p>12 for a highly structured, well-controlled,</p> <p>13 significant, definitive study that would replace</p> <p>14 all other studies that had happened at the time.</p> <p>15 You see that?</p> <p>16 A. I see the language that's here.</p> <p>17 Q. And it would be two years to do?</p> <p>18 A. I see the language that's here.</p> <p>19 Q. And costs less money than it's taken</p> <p>20 to have you sit here today in litigation, right?</p> <p>21 MR. EWALD: Objection to form.</p> <p>22 Mischaracterizes the cost, sitting here</p> <p>23 today in litigation. You know that.</p> <p>24 MR. GOLOMB: I'm sorry?</p>	<p style="text-align: right;">Page 336</p> <p>1 A. I did -- I do not recall.</p> <p>2 Q. Do you say he never understood why?</p> <p>3 It was clear that they didn't want to do the</p> <p>4 study, correct? Did you know that?</p> <p>5 A. I have not investigated the</p> <p>6 particular studies that J&J has done.</p> <p>7 Q. By the way, can you look at the cc's</p> <p>8 there on this report?</p> <p>9 A. Yeah.</p> <p>10 Q. See John O'Shaughnessy there? The</p> <p>11 product liability lawyer for J&J. You see that?</p> <p>12 A. I see the name.</p> <p>13 Q. Does that seem odd to you that a</p> <p>14 product liability lawyer, as somebody who's</p> <p>15 involved in safety analysis for organizations, a</p> <p>16 product liability lawyer would be involved in</p> <p>17 drafting a definitive epidemiology to study a</p> <p>18 safety issue?</p> <p>19 MR. EWALD: Objection to form.</p> <p>20 Mischaracterizes the letter. It's</p> <p>21 nothing but a draft.</p> <p>22 THE WITNESS: I have no idea.</p> <p>23 I mean, yeah.</p> <p>24 MR. EWALD: We've been going</p>
<p style="text-align: right;">Page 335</p> <p>1 THE WITNESS: I see what's</p> <p>2 here. I see what's written here.</p> <p>3 MR. EWALD: It didn't cost</p> <p>4 \$4,000 for her to sit here today in</p> <p>5 litigation. It's not -- not the case.</p> <p>6 BY MR. TISI:</p> <p>7 Q. Okay. And it'd take less time than</p> <p>8 you've been paid to be an expert for Johnson &</p> <p>9 Johnson talc, correct?</p> <p>10 A. First of all, I don't -- I don't</p> <p>11 think we can say that definitively. I mean, this</p> <p>12 is -- this is totally an estimate. One never</p> <p>13 knows what's going to happen.</p> <p>14 Q. Okay. Let's -- okay. So let's</p> <p>15 expand it. Let's add a hundred thousand dollars</p> <p>16 just for giggles. Okay? Let's make it a \$500,000</p> <p>17 study. It would have been done by 1998.</p> <p>18 Have you seen the results of that</p> <p>19 study?</p> <p>20 A. Again, I did not look at a specific</p> <p>21 -- I didn't look at specific studies.</p> <p>22 Q. Have you seen mention of Dr. Musket?</p> <p>23 He was the guy who drafted the protocol in this</p> <p>24 case. Have you reviewed his deposition?</p>	<p style="text-align: right;">Page 337</p> <p>1 more than an hour. Can we get perchance</p> <p>2 a break?</p> <p>3 MR. TISI: Okay. We can do</p> <p>4 that right now.</p> <p>5 THE COURT REPORTER: Off the</p> <p>6 record.</p> <p>7 (Recess: 2:44 p.m. -</p> <p>8 2:54 p.m.)</p> <p>9 BY MR. TISI:</p> <p>10 Q. Just a couple more questions about</p> <p>11 the study.</p> <p>12 First of all, if the definitive</p> <p>13 study that J&J done -- did are referenced in the</p> <p>14 document we just looked at had been available, do</p> <p>15 you think it would be among the 500 documents that</p> <p>16 you initially reviewed in this case? Would you</p> <p>17 expected it to be?</p> <p>18 MR. EWALD: How many what?</p> <p>19 BY MR. TISI:</p> <p>20 Q. In the initial 500 documents.</p> <p>21 MR. EWALD: Oh, sorry.</p> <p>22 BY MR. TISI:</p> <p>23 Q. 5 or 600 documents that were</p> <p>24 provided to you in this case.</p>

<p style="text-align: right;">Page 338</p> <p>1 A. What do you mean?</p> <p>2 Q. If there was a definitive study that</p> <p>3 they did that proactively showed that they were</p> <p>4 concerned enough about safety to do a study, would</p> <p>5 they have been in the documents that you were</p> <p>6 provided do you think?</p> <p>7 A. I -- I imagine.</p> <p>8 Q. The fact that you didn't see it,</p> <p>9 does that give you any indication as to whether</p> <p>10 the study was done?</p> <p>11 A. I don't know whether the study was</p> <p>12 done.</p> <p>13 Q. And you talked about the Credo. The</p> <p>14 importance to be responsible to parents and</p> <p>15 children and the people who use J&J's products.</p> <p>16 You remember that cultural,</p> <p>17 aspirational Credo that you talked about?</p> <p>18 A. I have included the Credo in my</p> <p>19 report.</p> <p>20 Q. Do you think it's part of the Credo</p> <p>21 to actually have a definitive study designed that</p> <p>22 would cost half a million dollars and save perhaps</p> <p>23 thousands of lives and not do it?</p> <p>24 MR. EWALD: Objection to form.</p>	<p style="text-align: right;">Page 340</p> <p>1 as a switching to cornstarch, and I'm</p> <p>2 paraphrasing, but that there would be abandonment</p> <p>3 of talc in favor of cornstarch.</p> <p>4 Do you remember that document?</p> <p>5 A. Is it something in here?</p> <p>6 Q. Yes, it is. It's 1999.</p> <p>7 MR. EWALD: Do you know which</p> <p>8 exhibit number it is?</p> <p>9 MR. TISI: I do not know it</p> <p>10 off the top of my head, but if she does</p> <p>11 not remember it.</p> <p>12 THE WITNESS: No, I think I</p> <p>13 remember it, but -- oh, it was -- it was</p> <p>14 a press release?</p> <p>15 MR. EWALD: Exhibit 20. Oh,</p> <p>16 there it is.</p> <p>17 THE WITNESS: Was it the</p> <p>18 press release here?</p> <p>19 BY MR. TISI:</p> <p>20 Q. You see that one?</p> <p>21 A. Yes.</p> <p>22 Q. Now, you talked about -- and would</p> <p>23 you read me the statement that it says again?</p> <p>24 It says from 1999, it says, given</p>
<p style="text-align: right;">Page 339</p> <p>1 Speculative. Argumentative.</p> <p>2 Go ahead.</p> <p>3 THE WITNESS: You know, I</p> <p>4 mean, I can't say anything about one</p> <p>5 single study how -- I mean, you know.</p> <p>6 BY MR. TISI:</p> <p>7 Q. Especially if it weren't done,</p> <p>8 right?</p> <p>9 A. There are many, obviously many</p> <p>10 studies have been done, as you pointed out today.</p> <p>11 Q. None by J&J. True?</p> <p>12 A. I don't know what J&J has done or</p> <p>13 hasn't done.</p> <p>14 Q. Well, isn't that part of the</p> <p>15 carrying out the Credo is knowing what they did to</p> <p>16 actually care about safety and parents and</p> <p>17 children?</p> <p>18 A. There are many ways to demonstrate</p> <p>19 that you care without having to do a single study.</p> <p>20 Q. So we talked about cornstarch. I'd</p> <p>21 like to talk about that a bit.</p> <p>22 You saw reference in an earlier</p> <p>23 document with the American Cancer Society in 1999</p> <p>24 that there was a discussion about using cornstarch</p>	<p style="text-align: right;">Page 341</p> <p>1 the recommendation of the American Cancer Society</p> <p>2 to use cornstarch, they might consider an</p> <p>3 "accelerated shift from talc to cornstarch."</p> <p>4 Do you see that?</p> <p>5 A. I see what's written here.</p> <p>6 Q. Well, do you see what I just said?</p> <p>7 A. It says -- I see what's written. It</p> <p>8 says:</p> <p>9 "Depending on how widely this gets</p> <p>10 publicized, you may want to build this into your</p> <p>11 forecast thinking (stay conservative on the total</p> <p>12 powder business, accelerated shift from talc to</p> <p>13 cornstarch)."</p> <p>14 I see what's written here.</p> <p>15 Q. Is that the first time you've</p> <p>16 actually seen any discussion that there was a</p> <p>17 discussion in the 1999-2000 time frame about</p> <p>18 reimagining a shift from talcum powder to</p> <p>19 cornstarch in favor of -- because of the ovarian</p> <p>20 cancer issue?</p> <p>21 Let me -- let me just reorient</p> <p>22 myself.</p> <p>23 In your report, you talked about the</p> <p>24 fact that there was no shift to cornstarch in the</p>

<p style="text-align: right;">Page 342</p> <p>1 1990s because the disruptive ambiguity related to 2 asbestos had been done by then. 3 Remember that? 4 A. Number one, I think I was talking 5 about the fact that cornstarch came on the market 6 in 1978. 7 Q. Oh. 8 A. At that time, and it wasn't a 9 replacement product because it didn't have the 10 same characteristics. 11 Q. Okay. But you see now some 12 evidence -- and we'll talk about it a little 13 bit -- that there was a discussion within Johnson 14 & Johnson about shifting its business away from 15 talc towards cornstarch in the 1999 time frame. 16 Do you see that reference in the 17 document that I just put in front of you again? 18 A. I see the language here. I can't 19 divine what they were thinking. 20 Q. Okay. Well, we'll talk about that. 21 Do you know any -- can you think of 22 any reason why, in light of all the things we were 23 discussing, why the company would not encourage a 24 shift away from talc to cornstarch in light of the</p>	<p style="text-align: right;">Page 344</p> <p>1 First of all, I think I asked you 2 before whether you looked at the deposition of 3 John McKeegan. 4 Do you remember his name? 5 A. No. 6 Q. So you don't know anything about 7 him. The lawyers have not provided you with his 8 deposition at all, have they? 9 A. I do not recall. 10 Q. Here is Exhibit Number 30. Is it 30 11 or 31? I'm sorry. 31. 12 Now, this document is about a year 13 later after the e-mail I just told you with -- I 14 showed you with the American Cancer Society and 15 the suggestion about accelerating the shift to 16 cornstarch, correct? This is about a year later? 17 A. This document is November 28th. 18 That was 7/9/1999. So. 19 Q. Right. So about a little over a 20 year? 21 A. A little over a year. 22 MR. TISI: Okay. And it's 23 from -- it's to -- it's from John 24 McKeegan to -- I'm sorry. I looked at</p>
<p style="text-align: right;">Page 343</p> <p>1 things that we've been discussing today? 2 A. Again, I can't make that decision. 3 I mean, I'm not -- I wasn't a member of the 4 company. I don't have all the information in my 5 -- all the information at hand. It would have to 6 -- I'd have to know the context. 7 Q. Well -- 8 A. I can't make that decision. 9 Q. Well, I'm not asking you to make the 10 decision. 11 I'm trying to, as part of 12 sensemaking, you want to make sense of what they 13 did and did not do, right? You want to understand 14 what they wanted to do in realtime. True? 15 A. No, that's not really the case. 16 Q. Okay. Well, in any event, you had 17 seen -- you saw the reference in the 1999 document 18 that there was a discussion about a shift to 19 cornstarch away from talc? 20 A. Number one, I see what's written in 21 this e-mail. I don't know whether there was a 22 discussion going on. All I know is what I see 23 here. 24 Q. And can I have Exhibit 31, please.</p>	<p style="text-align: right;">Page 345</p> <p>1 the wrong one. I'm sorry. I'm sorry. 2 I'm looking at Number 14. Put that one 3 aside for a moment. 4 Can we off the record for a 5 second? 6 THE COURT REPORTER: Off the 7 record. 8 (Recess: 3:02 p.m. - 9 3:04 p.m.) 10 MR. TISI: I'm going to show 11 you Exhibit Number 30. 12 (Document marked for 13 identification as Sutcliffe Exhibit 30.) 14 BY MR. TISI: 15 Q. This is an October 27, 2000 16 memorandum and this is to John McKeegan from CFTA. 17 You know who CFTA is, right? 18 A. Yeah, the Cosmetic, Talc & 19 Fragrance -- 20 Q. Sorry. You need to speak louder. 21 A. The Cosmetic, Talc & Fragrance 22 Association. 23 Q. And that was the initial trade 24 group?</p>

<p style="text-align: right;">Page 346</p> <p>1 A. It was and then it changed its name.</p> <p>2 Q. And this is a confidential</p> <p>3 memorandum from Nicholas -- Nichols-Dezenhall?</p> <p>4 A. I see the name.</p> <p>5 Q. And I assume you have not seen this</p> <p>6 document before?</p> <p>7 A. I do not recall seeing this</p> <p>8 document.</p> <p>9 Q. And this is October 22nd and he has</p> <p>10 attached a confidential memorandum.</p> <p>11 Do you see that?</p> <p>12 A. October 27, 2000?</p> <p>13 Q. Right.</p> <p>14 It says:</p> <p>15 "As you know, over the years, we've</p> <p>16 stood shoulder-to-shoulder with CFTA and its</p> <p>17 members in the unbending defense of the safety of</p> <p>18 several cosmetics ingredients. More often than</p> <p>19 not, together, we've prevailed. Like you, we have</p> <p>20 never shied away from a tough battle, and we're</p> <p>21 not going to start now."</p> <p>22 Do you see that?</p> <p>23 A. I see that.</p> <p>24 Q. Now, in the documents, do you</p>	<p style="text-align: right;">Page 348</p> <p>1 "There comes a time, however, when</p> <p>2 it is essential that -- together -- we fully</p> <p>3 assess and appreciate what we are up against."</p> <p>4 Do you see that?</p> <p>5 A. I see that.</p> <p>6 Q. And it lays out a bunch of different</p> <p>7 bullet points about the outside environment about</p> <p>8 talc and ovarian cancer, correct?</p> <p>9 A. I see the bullet points.</p> <p>10 Q. Okay. Now, at the very bottom it</p> <p>11 says:</p> <p>12 "We could go on and go on in laying</p> <p>13 out the negatives, but bottom-line -- except for a</p> <p>14 very few number of recruited scientific experts --</p> <p>15 the cosmetics industry will be a lone voice in</p> <p>16 handling a very tough issue."</p> <p>17 You see that?</p> <p>18 A. Yes.</p> <p>19 Q. It says:</p> <p>20 "This doesn't diminish one bit our</p> <p>21 will to fight, but it should shape our</p> <p>22 expectations on what to expect, and it should</p> <p>23 influence potential contingencies as events</p> <p>24 unfold. It also serves to remind us that the</p>
<p style="text-align: right;">Page 347</p> <p>1 understand that J&J was actually, quote, defending</p> <p>2 talc?</p> <p>3 A. I understand that J&J was providing</p> <p>4 information.</p> <p>5 Q. Okay. And it says at the bottom --</p> <p>6 they lay out a couple issues and feel free to take</p> <p>7 a look at it, but it says:</p> <p>8 "We could go on and on in laying out</p> <p>9 the negatives, but bottom-line -- except for a</p> <p>10 very few number of recruited scientific experts --</p> <p>11 the cosmetics industry will be a lone voice in</p> <p>12 handling a very tough issue."</p> <p>13 Do you see that?</p> <p>14 A. Where are you? I'm sorry. Just in</p> <p>15 the first paragraph?</p> <p>16 Q. No. Oh, sorry. Let's go through it</p> <p>17 together.</p> <p>18 It says -- it talks about the fact</p> <p>19 that they're with the industry a hundred percent,</p> <p>20 correct?</p> <p>21 A. That --</p> <p>22 Q. In defending talc?</p> <p>23 A. -- I see what's written there.</p> <p>24 Q. Okay. It says:</p>	<p style="text-align: right;">Page 349</p> <p>1 relative regulatory freedom of the cosmetics</p> <p>2 industry depends, in large part, on the hard won</p> <p>3 perception that it takes self-policing action when</p> <p>4 confronted with credible information about an</p> <p>5 ingredient safety issue."</p> <p>6 You see that?</p> <p>7 A. I see that.</p> <p>8 Q. Okay. And what they're saying is,</p> <p>9 look, other than a couple of your experts here</p> <p>10 that are funded by you, there seems to be a lot of</p> <p>11 people that's saying there's a problem with talc.</p> <p>12 True?</p> <p>13 MR. EWALD: Objection to form.</p> <p>14 Mischaracterizes the document.</p> <p>15 Go ahead.</p> <p>16 THE WITNESS: I see what's</p> <p>17 written here. I have not studied this</p> <p>18 document. I can't divine what they were</p> <p>19 talking about.</p> <p>20 BY MR. TISI:</p> <p>21 Q. It goes on in the next page. It</p> <p>22 said:</p> <p>23 "It would not be unwise for</p> <p>24 companies marketing talc-based products for use</p>

<p style="text-align: right;">Page 350</p> <p>1 with babies and infants to consider ways to 2 reformulate if necessary." 3 Do you see that? 4 A. I see that sentence. 5 Q. Okay. "Attached is a recommended 6 plan to do everything we can (within your budget 7 parameters) to work with CFTA and its members to 8 maintain consumer confidence in the cosmetics 9 products that include talc." 10 You see that? 11 A. I see the sentence. 12 Q. It says: 13 "But let us all be clear on what 14 we're up against." 15 Last sentence, correct? 16 A. I see what's written. 17 Q. So they're raising the question 18 that -- that everything is reaching a crescendo 19 here with in the 2000 time frame about talc and 20 ovarian cancer, correct? 21 A. I can't comment one way or another. 22 I have not studied this document. I don't know 23 what's going on here. 24 MR. TISI: I have to go off</p>	<p style="text-align: right;">Page 352</p> <p>1 A. No. 2 Q. Okay. Colleen Goggins, I'll 3 represent to you, is a high executive within the 4 company. In fact, I believe she's the president 5 of Johnson & Johnson Consumer at the time. 6 A. I don't know. 7 Q. Okay. And it says that there was 8 going to be a hearing of the NTP. 9 Do you see that? 10 A. Yep. 11 MR. TISI: I have to take a 12 break. I apologize. 13 THE COURT REPORTER: Off the 14 record. 15 (Recess: 3:12 p.m. - 16 3:13 p.m.) 17 MR. TISI: I'm going to show 18 you what I've had marked as Exhibit 19 Number 52. 20 (Document marked for 21 identification as Exhibit 52.) 22 (Pause.) 23 BY MR. TISI: 24 Q. I apologize for the delay.</p>
<p style="text-align: right;">Page 351</p> <p>1 the record. I'm sorry. 2 THE COURT REPORTER: Off the 3 record. 4 (Recess: 3:10 p.m. - 5 3:10 p.m.) 6 MR. TISI: All right. I'm 7 going to show you a document the next 8 month on November 17, 2000, Exhibit 9 Number 32. 10 (Document marked for 11 identification as Sutcliffe Exhibit 32.) 12 BY MR. TISI: 13 Q. And it's an e-mail and it says: 14 "Attached is the agenda and a 15 background document for the Monday discussion on 16 talc." 17 Do you see that? 18 A. Yes. 19 Q. And it's to, among other people, 20 Mr. McKeegan is on there, but John O'Shaughnessy 21 is on there as well as, the lawyer for J&J. 22 You see that? 23 A. I see that. 24 Q. And you know who Colleen Goggins is?</p>	<p style="text-align: right;">Page 353</p> <p>1 All right. So this is an e-mail 2 from Ms. Colamarino to Nancy Musco entitled "Here 3 is the current thinking" and it's dated talc March 4 9th. 5 Do you see that? 6 A. I see it. November? November? 7 Q. Right. November 14th and it's a 8 forward on talc. 9 Do you see that? 10 A. "Talc - November 9th." 11 Q. Right. 12 And if you go to the second page, 13 there is a draft position statement about talc and 14 NTP. 15 Do you see that? 16 A. There is a -- the second page is 17 just a memorandum. 18 Q. It says "Johnson & Johnson Consumer" 19 on the next page after that? 20 A. I see that. 21 Q. "Johnson & Johnson Consumer" and it 22 has "Summary Background Notes." 23 Do you see that? 24 A. I see that.</p>

<p style="text-align: right;">Page 354</p> <p>1 Q. And it says a draft report is to be 2 presented to NTP on December 13th and 14th. 3 Do you see that? 4 A. Where is that? 5 Q. It's right here. (Indicates). 6 A. Oh. 7 (Reviews document.) 8 Okay. I see that. 9 Q. Okay. And it says if you look at 10 the next page, they prepared a holding statement 11 before that conference. 12 You see that? Last page. 13 Next page. 14 A. Uh-huh. 15 Q. And the holding statement says -- 16 and this is before -- 17 MR. EWALD: On the next page. 18 THE WITNESS: Okay. 19 BY MR. TISI: 20 Q. -- before NTP. 21 It says: 22 "Johnson & Johnson intends to 23 discontinue its use of talc -- of talc in all of 24 its consumer products in the U.S. Beginning</p>	<p style="text-align: right;">Page 356</p> <p>1 A. I see what they're -- I see what's 2 written here. 3 Q. Okay. And this is an e-mail to 4 Nancy Musco. 5 You know who Nancy Musco is. You've 6 cited her in your report, right? 7 A. I know the name. I don't know 8 specifically who she is. 9 Q. Okay. On November 14th and it talks 10 about the current thinking is in talc. 11 A. I see this memo. 12 Q. Okay. So let's see if we can kind 13 of put it together, and I apologize for the little 14 bit of confusion with the documents. 15 In 1999, they were talking about 16 discontinuing -- discontinuing talc in favor of 17 cornstarch. 18 We looked at that, right? 19 A. I see this memo. 20 Q. Okay. Now, we see this memo where 21 they announce that they're going to do it on 22 December 1st? 23 A. I see what is written here. 24 Q. Okay. And they were also talking</p>
<p style="text-align: right;">Page 355</p> <p>1 December 1, 2000, the company's U.S. manufacturing 2 operations will switch to cornstarch." 3 You see that? 4 A. I see that. 5 Q. And so this would have been before 6 NTP had actually made a decision because the 7 papers weren't being submitted until mid-December. 8 True? 9 A. I honestly don't remember the date 10 of the papers. 11 Q. Well, go back to -- go back to the 12 second page. The third page of the document. See 13 if we can go through this together. 14 The draft report will be presented 15 to NTP on December 13-14. 16 A. Okay. 17 Q. You see that? 18 A. I see that. 19 Q. Okay. And so what they're doing is 20 they're preparing a holding statement announcing 21 the switch to cornstarch on December 1st before 22 they -- before they ever knew the result of the 23 NTP. 24 Do you see that?</p>	<p style="text-align: right;">Page 357</p> <p>1 about a meeting with upper management. True? 2 A. Again, if that's in here, then it's 3 in this document. 4 MR. TISI: Now, there was a 5 meeting on -- there was an agenda for a 6 meeting on December 1st. Here is Exhibit 7 Number 32. 8 Did I give that to you, John? 9 MR. EWALD: Yes. 10 BY MR. TISI: 11 Q. And there's a meeting that's been 12 set. It says: 13 "Attached is the agenda and a 14 background document for the Monday discussion on 15 talc. Please review the backgrounder before the 16 meeting." 17 And the importance is high. 18 Do you see that? 19 A. I see that. 20 Q. And the date of the meeting was 21 January 20th -- excuse me -- November 20, 2000, 22 correct? 23 A. I see the Monday 11/20. 24 Q. Have you ever seen the minutes from</p>

<p style="text-align: right;">Page 358</p> <p>1 that meeting of this upper level management of 2 J&J? 3 A. Again, I haven't studied individual 4 events. So I don't recall seeing meeting minutes. 5 Q. Would it be important for you if 6 there was a meeting that would discuss the switch 7 to cornstarch that was being discussed that would 8 happen on December 1, 2000? 9 Would that be important information 10 for you to know and consider when considering 11 J&J's response to talc ovarian cancer issue? 12 A. What would be important -- I mean, 13 what's important is, is what -- what -- just in 14 total everything is important. And in my 15 analysis, I'm not taking into account one single 16 piece of information, and recall that what I've 17 done is to establish J&J's institutionalized 18 knowledge over time and the extent to which J&J 19 has taken actions to assure this would be. 20 Q. So the fact that there was a meeting 21 that we do not have the minutes of from 22 November 20, 2000, right before a proposed 23 withdrawal of talc from the market on 24 December 1st, that would not be important for you</p>	<p style="text-align: right;">Page 360</p> <p>1 A. Uh-huh. 2 Q. You mentioned that in your report. 3 A. Yes. 4 Q. On page 72 of your report, you have 5 several paragraphs about Health Canada? 6 A. Correct. 7 Q. And you understand as general 8 background in 2019 the Canadian version of the FDA 9 issued a draft report doing a comprehensive review 10 of the evidence and concluding that talc was a 11 cause of ovarian cancer. 12 True? 13 A. I do -- I know about Health Canada. 14 Q. Well, and the exact generally what 15 it said? 16 A. Generally, yes. 17 Q. And had you seen any prior 18 evaluation, like what Health Canada did, done by 19 J&J in the 20-30 years that the issue was -- was 20 before J&J? 21 Have you seen any internal 22 evaluation of the evidence as of that time that 23 J&J did, much like Health Canada did? 24 A. I think that J&J has been paying</p>
<p style="text-align: right;">Page 359</p> <p>1 to know or see? 2 A. Again, I, you know, I have not -- I 3 have not studied this, and I can't say that it 4 would be important or it wouldn't be important. 5 Q. Oh, and by the way, company's lawyer 6 was on that document, too. 7 John O'Shaughnessy was at the 8 meeting, right? 9 A. I mean, there are people. There's 10 many people on here. So. 11 Q. The product liability lawyer is on 12 the market -- is on -- John O'Shaughnessy, right? 13 A. I see -- I see his name. 14 Q. John O'Shaughnessy has been on all 15 these documents we've looked at in this time 16 frame, right? 17 MR. EWALD: Objection to form. 18 THE WITNESS: Again, I've 19 seen the name on some documents. I don't 20 know. 21 BY MR. TISI: 22 Q. All right. Let's talk about -- 23 let's switch topics a bit. Let's talk about 24 Health Canada just a bit.</p>	<p style="text-align: right;">Page 361</p> <p>1 attention to the -- not paying attention -- has 2 been looking at studies over time and had been 3 interacting with FDA and other entities. So yes, 4 they were -- they were interacting with the 5 scientific community. 6 Q. I move to strike. That wasn't my 7 question. 8 My question was: Had you seen prior 9 2000 -- 1999 -- excuse me -- 2019 J&J performed 10 any kind of comprehensive review of the 11 epidemiology studies all in one place like Health 12 Canada did? 13 Not paying attention. Not 14 interacting. I'm talking about something where 15 the scientists sat down together and did a 16 comprehensive review like Health Canada did. 17 A. I -- 18 Q. Or even like FDA did in that 2014 19 letter. 20 A. I know that J&J was following the 21 scientific literature. 22 Q. Not my question, respectfully. 23 Had you ever seen a document where 24 J&J actually did a comprehensive review?</p>

<p style="text-align: right;">Page 362</p> <p>1 A. I have -- I can't say that I did or 2 I didn't. So. 3 Q. Okay. Now, that report was 4 available online, correct? The draft report, 5 right? 6 A. I don't recall. 7 Q. Do you know where you got the 8 document from? Did you get it from one of -- from 9 J&J's lawyers? 10 A. I mean, all of the materials came to 11 Analysis Group. So I don't know one way or 12 another. 13 Q. So you never did your own -- I'm 14 sorry. 15 You never did your own review of the 16 medical literature, scientific literature? You 17 never got online and did your own evaluation? You 18 got your information from Analysis Group? 19 A. I -- 20 MR. EWALD: Objection to form. 21 Mischaracterizes testimony. 22 Go ahead. 23 THE WITNESS: No, the 24 documents that I reviewed are on a</p>	<p style="text-align: right;">Page 364</p> <p>1 A. Yes. 2 Q. Well, Health Canada was publicly 3 available, correct? 4 A. I -- I don't know. I'm -- I don't 5 know. I don't remember. 6 Q. Did you get it from Analysis Group 7 or did you get it from your own research? 8 A. I did not look up Health Canada 9 myself. 10 Q. Okay. That was my question. 11 A. Yeah. 12 Q. Did you see that Health Canada 13 provided an infographic with the proposed -- with 14 the draft report? 15 A. I looked at the draft screening 16 assessment. I don't remember. 17 MR. TISI: Well, I should have 18 marked 33. 19 (Document marked for 20 identification as Sutcliffe Exhibit 33.) 21 BY MR. TISI: 22 Q. This is the infographic that was 23 provided by Health Canada with its Draft Screening 24 Assessment.</p>
<p style="text-align: right;">Page 363</p> <p>1 portal, and Analysis Group keeps track of 2 those documents. 3 BY MR. TISI: 4 Q. Did you collect them or did Analysis 5 Group collect them? 6 A. I mean, they're -- they're coming in 7 from the production materials, from trial 8 testimony, etc., as I've described in my report. 9 Q. Did you do any of your own 10 individual research? Apart from -- apart from 11 Analysis Group, did you get on the computer, go to 12 the library, do anything yourself, other than get 13 stuff through -- 14 A. I looked at several websites and 15 other -- I mean, I've looked at documents. 16 Q. Well, I understand you looked at 17 documents. You looked at documents provided by 18 Analysis Group. 19 A. I looked at documents provided by 20 many places -- 21 Q. Okay. 22 A. -- as well as, as I've described, 23 publicly available documents. 24 Q. Okay.</p>	<p style="text-align: right;">Page 365</p> <p>1 A. Okay. 2 Q. Have you seen this before? 3 A. I've seen this before. 4 Q. Okay. And it says here. It says, 5 first of all, "These products may cause ovarian 6 cancer." 7 Do you see that? 8 A. "May be harmful to human health." 9 Q. Well, on the right side in the box 10 it says, "These products may cause ovarian 11 cancer," right? 12 A. I see that. 13 Q. Okay. And it says to minimize 14 exposure, risk minimization, which we've talked 15 about all day, it says you can do several things. 16 Number 1. You can "Avoid inhaling 17 loose talc powder." 18 You see that? 19 A. I see that. 20 Q. Number 2. "Avoid female genital 21 exposure to talc." 22 A. I see that. 23 Q. Number 3. "Choose a talc-free 24 alternative" like cornstarch, correct?</p>

<p style="text-align: right;">Page 366</p> <p>1 A. I see "Choose a talc-free 2 alternative." 3 Q. All of these options for risk 4 mitigation were on the table for 20, 30 years, 5 correct? 6 A. Again, I see what you're saying 7 here. 8 Q. I know you see what I'm saying. 9 A. Yeah. 10 Q. I mean, we can all. I can hand this 11 to anybody and they can see what I'm saying. 12 I'm asking you: All of these risk 13 reduction strategies were -- were being discussed 14 in realtime, not in hindsight, all these things 15 were being discussed in the medical and scientific 16 literature for 30-40 years before -- before this 17 infographic came out. True? 18 A. Again, I have not done a systematic 19 review of all of the literature. 20 Q. I didn't ask you whether you did a 21 systematic review of all the literature, 22 respectfully. 23 A. Yeah. 24 Q. We've gone through documents today</p>	<p style="text-align: right;">Page 368</p> <p>1 showed you today going back 20-30 years? 2 A. Again, I have not analyzed all the 3 literature. 4 Q. I didn't ask you whether you 5 analyzed all the literature. 6 I asked you whether they were in the 7 documents I showed you today. 8 A. I've seen various things in the 9 documents today. 10 Q. Okay. And that included choosing a 11 talc-free alternative like cornstarch? 12 A. And I've said that J&J had a 13 cornstarch in the 1970s. 14 Q. And did they ever tell women, you 15 may want -- did J&J -- okay. Let's see. Let's do 16 this as well. 17 You saw the University of Michigan 18 website that said there was an association between 19 talc and ovarian cancer and that cornstarch does 20 not have that risk. 21 You remember that? 22 A. I remember seeing a document from 23 Michigan. 24 Q. You saw the American Cancer Society</p>
<p style="text-align: right;">Page 367</p> <p>1 where the issue of changing to cornstarch. The 2 Cancer Society, Harlow, Dr. Cramer, all these were 3 being discussed in realtime. True? 4 A. You keep talking about changing to 5 cornstarch. Cornstarch was available to people 6 already. 7 Q. Fine. 8 I asked discontinuing talc in favor 9 of cornstarch? 10 A. Again, I've demonstrated J&J's 11 institutional knowledge -- 12 Q. Not asking -- 13 A. -- and that -- 14 MR. EWALD: Let her finish 15 answering. 16 THE WITNESS: -- it has not 17 been disavowed by the regulatory agencies 18 or information like that. 19 BY MR. TISI: 20 Q. All right. Now, please answer my 21 question. 22 All the risk strategies to 23 reducing -- risk strategies listed in this 24 infographic were discussed in the documents that I</p>	<p style="text-align: right;">Page 369</p> <p>1 which said, in light of the uncertainty, women may 2 want to switch to cornstarch. 3 Remember that from 1999? 4 A. I honestly reviewed a lot of 5 documents today. I'm not sure. 6 Q. Okay. You remember that one? We 7 just talked about it in five minutes ago. The 8 1999 switch to cornstarch, correct? 9 A. Oh, the -- yes, I saw that. 10 Q. Okay. Take those two. 11 Did J&J ever tell consumers what 12 University of Michigan was telling its -- telling 13 people on its website? 14 A. Again, J&J came to an understanding 15 of what the safety of its talc over time, actively 16 seeking knowledge, scientific knowledge through 17 many activities. And I think that J&J, you know, 18 that their stance is, after all this time in 19 trying to affirm, disaffirm what they know, they 20 came to a conclusion, and I think the way that 21 they've been acting is consistent with what they 22 think. 23 Q. So my question is going back to the 24 University of Michigan: J&J never told consumers</p>

<p style="text-align: right;">Page 370</p> <p>1 what University of Michigan told its patients, did 2 it? 3 A. Again, I'm just, you know, I can't 4 comment on that because I wasn't studying it. 5 Q. University of Michigan told -- told 6 consumers a lot more than J&J ever told them, 7 correct? 8 MR. EWALD: Objection to form. 9 Argumentative. 10 THE WITNESS: I think I 11 answered the question like one -- one 12 time ago about J&J's institutionalized 13 knowledge about the safety of its 14 product. I think they've been consistent 15 with what they -- what they know and 16 believe. 17 BY MR. TISI: 18 Q. Okay. Let's talk about asbestos. 19 Let's get to asbestos now. 20 You're really not an expert in 21 asbestos and testing, correct? 22 A. I am not an expert in testing. 23 Q. Okay. Well, you're not an expert in 24 asbestos either, are you?</p>	<p style="text-align: right;">Page 372</p> <p>1 True? You've seen that reference. You've seen 2 that phrase. There is no safe level of asbestos, 3 correct? 4 A. Again, it's unknown about whether 5 there's a safe level. 6 Q. Okay. And so in light of that, you 7 don't want to expose anybody to any asbestos. 8 True? 9 A. If they're -- I just -- I just 10 talked about that. 11 Q. Well, do you want to be exposed to 12 asbestos? 13 A. Asbestos is in the air. I mean, you 14 know, the FDA has said that. 15 Q. Okay. Do you want to be exposed to 16 one more -- one more fiber of asbestos than what's 17 in the air? 18 A. Again -- 19 Q. Would you walk into a room where 20 there's asbestos -- an increased level of 21 asbestos, even if it's tiny bit? 22 A. Of course, nobody would want to do 23 that, but we know that it exists in the 24 environment.</p>
<p style="text-align: right;">Page 371</p> <p>1 A. No. I've learned a lot about 2 asbestos over the last five years. 3 Q. Right, in this case. 4 But outside, outside the courtroom, 5 you have never studied asbestos? 6 A. I have not studied asbestos, but 7 that's like, you know, the other act -- the other 8 projects that I've worked on. I mean, I don't 9 have to be an expert in everything in order to 10 understand what an organization does. 11 Q. But you do know asbestos in any form 12 is a serious safety issue for any product, 13 correct? 14 A. I know that asbestos can be harmful. 15 Q. And you agree with what you've read. 16 There's no safe level of asbestos, correct? 17 A. At the present time, it's -- there 18 is no safe level or it's unknown whether there's a 19 safe level -- 20 Q. Well -- 21 A. -- I guess would be a better way to 22 put it. 23 Q. -- the FDA has indicated and the EPA 24 has indicated there is no safe level of asbestos.</p>	<p style="text-align: right;">Page 373</p> <p>1 Q. Okay. So, so nobody would want to 2 walk -- voluntarily walk into a room where there's 3 even a tiny bit of asbestos more than is in the 4 background, right? 5 A. Again, it exists. 6 Q. No, I didn't ask you whether it 7 exists. 8 You would not want to walk into this 9 room -- if I told you there was an increased 10 number of fibers in this room, even if it's a tiny 11 bit, you would not walk into this room, would you? 12 A. I would not want to walk into a room 13 with asbestos. 14 Q. Okay. Now, can I have Exhibit 15 Number 34, please. 16 You know that talc and asbestos from 17 what you've studied can occur together 18 geologically, correct? 19 A. I understand that. 20 Q. Okay. And you also know that talc 21 has been implicated as a potential source of 22 asbestos exposure, correct? 23 A. Yes. 24 Q. Okay. Can I have Exhibit Number 35,</p>

<p style="text-align: right;">Page 374</p> <p>1 please.</p> <p>2 Would you knowingly recommend that</p> <p>3 women apply asbestos to their genital area?</p> <p>4 A. Of course not.</p> <p>5 Q. Would you tell women they should</p> <p>6 apply talc to their genital area even if it</p> <p>7 contains a little bit of asbestos?</p> <p>8 A. I -- I -- no, of course not.</p> <p>9 MR. TISI: Exhibit Number 35,</p> <p>10 if I could, is a recent FDA final rule</p> <p>11 dated March 28, 2004.</p> <p>12 (Document marked for</p> <p>13 identification as Sutcliffe Exhibit 35.)</p> <p>14 BY MR. TISI:</p> <p>15 Q. Have you seen that?</p> <p>16 MR. EWALD: Is it '4?</p> <p>17 MR. TISI: 35.</p> <p>18 MR. EWALD: No. Is it 2004 or</p> <p>19 2024?</p> <p>20 THE WITNESS: 2024.</p> <p>21 BY MR. TISI:</p> <p>22 Q. I'm sorry. 2024.</p> <p>23 A. Yeah, 2024.</p> <p>24 I have -- I don't -- I haven't seen</p>	<p style="text-align: right;">Page 376</p> <p>1 tested, did not find asbestos.</p> <p>2 Q. No. You know that they tested two</p> <p>3 bottles of J&J talc and found asbestos?</p> <p>4 A. If you're talking about 2019? Is</p> <p>5 that what you're talking about?</p> <p>6 Q. Yes.</p> <p>7 A. Yes, then I know that J&J -- that,</p> <p>8 you know, other labs did not find it.</p> <p>9 Q. And you know that the FDA has</p> <p>10 maintained and continues to maintain they found</p> <p>11 what it found?</p> <p>12 A. And you know the other 155 tests</p> <p>13 suggested that it wasn't in the lot.</p> <p>14 Q. Except the ones that RJ Lee did</p> <p>15 where it says it was the cause of contamination</p> <p>16 based upon an air conditioner, right?</p> <p>17 A. We know that there's contamination</p> <p>18 that happens.</p> <p>19 Q. Okay. So everything -- everything</p> <p>20 is positive until it becomes negative, right?</p> <p>21 A. That's incorrect.</p> <p>22 MR. EWALD: Objection.</p> <p>23 Argumentative.</p> <p>24 BY MR. TISI:</p>
<p style="text-align: right;">Page 375</p> <p>1 this document since it just came out.</p> <p>2 Q. Let's just look at it really</p> <p>3 quickly, and I'll just ask you one question about</p> <p>4 it.</p> <p>5 It says -- if you go to page -- page</p> <p>6 on the -- the one that ends in 21973. The middle</p> <p>7 column, almost at the bottom, it says:</p> <p>8 "Some talc deposits and articles</p> <p>9 containing talc have been shown to contain</p> <p>10 asbestos. Thus" --</p> <p>11 MR. EWALD: Sorry. Hold on</p> <p>12 one second. I think we're close, but we</p> <p>13 need to find it.</p> <p>14 There you go. Go ahead.</p> <p>15 BY MR. TISI:</p> <p>16 Q. It says:</p> <p>17 "Some talc deposits and articles</p> <p>18 containing talc have been shown to contain</p> <p>19 asbestos."</p> <p>20 You see that?</p> <p>21 A. I see that.</p> <p>22 Q. And you know that the FDA actually</p> <p>23 tested J&J talc and found asbestos, right?</p> <p>24 A. Actually, I know that the FDA</p>	<p style="text-align: right;">Page 377</p> <p>1 Q. All right. So the FDA has found the</p> <p>2 test of two -- of two bottles of -- of J&J talc</p> <p>3 and found asbestos in one of them, and they have</p> <p>4 never disavowed that. True?</p> <p>5 A. So as far as I know, that nothing</p> <p>6 has been said yet.</p> <p>7 Q. Okay. Since 2019, nothing has been</p> <p>8 said yet. It's been five years.</p> <p>9 A. Again, at the same time, we know</p> <p>10 that there are plenty of other testings that's</p> <p>11 going on.</p> <p>12 Q. Okay. So, and you know that talc</p> <p>13 with asbestos -- do you know whether or you've</p> <p>14 been told as you revealed that talc with asbestos</p> <p>15 has been found by IARC to be a Class 1 carcinogen?</p> <p>16 A. I am -- I'm not sure what you're</p> <p>17 saying.</p> <p>18 Q. Now, you read -- I'm sorry.</p> <p>19 You read Dr. Hopkins' testimony on</p> <p>20 -- you read several of his transcripts including</p> <p>21 in Ingham, correct?</p> <p>22 A. I -- yes.</p> <p>23 Q. Have you read that Dr. Hopkins said</p> <p>24 there was a zero tolerance policy for talc and</p>

<p style="text-align: right;">Page 378</p> <p>1 asbestos?</p> <p>2 A. I don't remember.</p> <p>3 MR. TISI: All right. Let's</p> <p>4 show Exhibit Number 36, please.</p> <p>5 (Document marked for</p> <p>6 identification as Sutcliffe Exhibit 36.)</p> <p>7 BY MR. TISI:</p> <p>8 Q. This is a transcript of Dr. Hopkins</p> <p>9 dated April 11, 2018, Exhibit Number 36.</p> <p>10 MR. EWALD: Can you read that?</p> <p>11 THE WITNESS: Okay. It's</p> <p>12 pretty -- okay. Yeah.</p> <p>13 BY MR. TISI:</p> <p>14 Q. If you go to page 108, which is on</p> <p>15 the second page of the document.</p> <p>16 A. Uh-huh.</p> <p>17 Q. Question: "Johnson & Johnson has</p> <p>18 told the world that it has a zero tolerance policy</p> <p>19 for asbestos in its talc, correct?"</p> <p>20 You see that question?</p> <p>21 A. Where is it?</p> <p>22 Q. It's on line 108.</p> <p>23 MR. EWALD: What page?</p> <p>24 MR. TISI: Page 107. Here,</p>	<p style="text-align: right;">Page 380</p> <p>1 asbestos in its talc, correct?"</p> <p>2 A. I see that.</p> <p>3 Q. What was his answer?</p> <p>4 A. Okay. He says "Yes."</p> <p>5 Q. Okay. "The reason is that no mother</p> <p>6 or father would ever buy talc for use on</p> <p>7 themselves or their children if they knew it had a</p> <p>8 single fiber of asbestos in it, correct?"</p> <p>9 What was Mr. -- Dr. Hopkins' name --</p> <p>10 answer?</p> <p>11 A. "Yes."</p> <p>12 Q. Question: "Johnson & Johnson knows</p> <p>13 that asbestos in its talc could make people sick</p> <p>14 because Johnson & Johnson knows asbestos is a</p> <p>15 carcinogen and can cause mesothelioma, correct,</p> <p>16 sir?"</p> <p>17 You see that?</p> <p>18 A. I see that.</p> <p>19 Q. And his answer is: "That's correct,"</p> <p>20 he says.</p> <p>21 And question: "Johnson & Johnson</p> <p>22 knows there's no safe level of asbestos exposure,</p> <p>23 especially for children, correct, sir?"</p> <p>24 Answer: "Again, there is no safe</p>
<p style="text-align: right;">Page 379</p> <p>1 John.</p> <p>2 MR. EWALD: Oh.</p> <p>3 THE WITNESS: Okay. I see</p> <p>4 it.</p> <p>5 MR. EWALD: Yep.</p> <p>6 THE WITNESS: Right.</p> <p>7 BY MR. TISI:</p> <p>8 Q. Okay. So let's read it together.</p> <p>9 Okay?</p> <p>10 A. Uh-huh.</p> <p>11 Q. It says:</p> <p>12 "Johnson & Johnson has told the</p> <p>13 world that it has a zero tolerance policy for</p> <p>14 asbestos in talc, correct?"</p> <p>15 Answer: "I'm not sure the whole</p> <p>16 world. Johnson & Johnson's policy is to have talc</p> <p>17 which is zero asbestos."</p> <p>18 He said that, right?</p> <p>19 A. Yeah. He's not saying that there's</p> <p>20 zero tolerance policy, whatever that is. He's</p> <p>21 saying Johnson & Johnson's policy is to have talc</p> <p>22 with just zero asbestos.</p> <p>23 Q. Okay. Question: "So Johnson &</p> <p>24 Johnson has a zero tolerance policy for any</p>	<p style="text-align: right;">Page 381</p> <p>1 level."</p> <p>2 MR. EWALD: Hold on.</p> <p>3 THE WITNESS: "No known safe</p> <p>4 level."</p> <p>5 BY MR. TISI:</p> <p>6 Q. "No known safe level," correct?</p> <p>7 A. "No known safe level."</p> <p>8 Q. "That's right. Especially for</p> <p>9 children, correct?"</p> <p>10 "Yes."</p> <p>11 Do you agree with Dr. Hopkins this</p> <p>12 whole testimony that we just read together?</p> <p>13 A. What I agree -- what I agree to is</p> <p>14 that I have in the thousands of pages of documents</p> <p>15 that I've reviewed have never seen anything</p> <p>16 suggesting that anyone at Johnson & Johnson</p> <p>17 thought it was acceptable to expose consumers to</p> <p>18 asbestos.</p> <p>19 Q. That's -- okay. Let's continue to</p> <p>20 talk about it.</p> <p>21 Now, next page, the next page of the</p> <p>22 document on page 145, 115. Page 145. I'm sorry.</p> <p>23 On line 6 it says:</p> <p>24 "Does CT" --</p>

<p style="text-align: right;">Page 382</p> <p>1 MR. EWALD: Sorry. Hold on. 2 Hold on. 3 THE WITNESS: Page 145. 4 MR. EWALD: 145 bottom right. 5 THE WITNESS: 15. 6 MR. EWALD: There's a word. 7 MR. TISI: (Indicates). 8 MR. EWALD: Right. Right. 9 BY MR. TISI: 10 Q. It says: 11 "Does CTFA J4 look for chrysotile at 12 all? I'm giving you an opportunity to say no, 13 because that's the truth." 14 Question: "Does it look for 15 chrysotile?" 16 "It doesn't -- it doesn't look for 17 chrysotile specifically." 18 Do you see that? 19 A. I see that. 20 Q. Okay. So the J4-1 method does not 21 look for chrysotile. True? You agree with 22 Dr. Hopkins? 23 A. The J4-1 -- as far as I know, J4-1 24 looks for amphiboles, and we know that J&J</p>	<p style="text-align: right;">Page 384</p> <p>1 -- I'm really going to interrupt you and move to 2 strike your testimony. 3 Do you understand that -- and I'm 4 not looking to argue. 5 Do you understand that the FDA has 6 recognized shortcomings with the testing of talc 7 for asbestos? 8 A. I am understanding that there are 9 debates going on right now about testing and 10 thinking about the IWGACP, and I understand that 11 there are debates going on, but I also understand 12 that these are the tests that are recommended at 13 this time. 14 Q. Okay. I'm not asking you that 15 question. I'm not asking about debates. 16 I'm asking you whether or not the 17 FDA has said there has been long understood 18 shortcomings with the testing for talc, long 19 understood in the past. 20 A. Again, I'm not a text -- a testing 21 expert. 22 Q. Okay. 23 A. And if you want to show me where the 24 FDA.</p>
<p style="text-align: right;">Page 383</p> <p>1 implemented TEM early in the 1970s in order to 2 have the most sensitive tests, which are still the 3 ones that are recommended today. 4 Q. Most sensitive doesn't mean 5 completely sensitive, does it? 6 A. Again, I am not a testing expert -- 7 Q. Okay. 8 A. -- and I am not opining -- 9 Q. But you know -- 10 A. -- on tests. 11 What I do know is that J&J was 12 active in making sure that tests were developed, 13 working with the FDA as well as the scientific 14 community, and they implemented not only what was 15 implemented by the industry, but they went beyond 16 the industry standard. 17 Q. Does the FDA consider -- FDA has 18 said that it's been long understanding that there 19 is shortcomings with the testing for talc in 20 asbestos. 21 They use that word "shortcoming," do 22 they not? 23 A. Yeah. I know that also in 2019 -- 24 Q. No. My question is actually can you</p>	<p style="text-align: right;">Page 385</p> <p>1 Q. I'm going to. 2 A. I just don't remember the FDA -- 3 Q. You don't remember. Okay. 4 A. -- precisely what the FDA said. 5 Q. All right. Have you seen as far 6 back as the 1970s they were talking about just not 7 dealing with the whole issue at all of asbestos in 8 talc and just saying, you know, let's be safe and 9 just use cornstarch instead of talc? 10 Have you seen any references to 11 that? 12 MR. EWALD: They is who? 13 BY MR. TISI: 14 Q. People in the medical and scientific 15 community. 16 A. Yeah, again, I, you know, I did not 17 study the issue of cornstarch. 18 Q. You have a lot of discussion in your 19 report about talc and asbestos. 20 Would you agree that one way to 21 absolutely 100 percent sure that people were not 22 exposed to asbestos in Johnson's Baby Powder would 23 be to use cornstarch? 24 A. Again, I haven't studied cornstarch</p>

<p style="text-align: right;">Page 386</p> <p>1 and --</p> <p>2 Q. I'm not asking for that.</p> <p>3 I'm asking you: The only way, the</p> <p>4 only way, to assure 100 percent certainty that a</p> <p>5 woman is not exposed to asbestos with the use of</p> <p>6 Johnson's Baby Powder, the only way is to not use</p> <p>7 it?</p> <p>8 A. Again, I have not studied that</p> <p>9 issue. I have studied what J&J knew and when. I</p> <p>10 have studied the issue of the tests that have been</p> <p>11 -- that have been taken over time that have</p> <p>12 contributed to J&J's understanding of the safety</p> <p>13 of its talc product.</p> <p>14 (Document marked for</p> <p>15 identification as Sutcliffe Exhibit 37.)</p> <p>16 BY MR. TISI:</p> <p>17 Q. I show you testimony from a</p> <p>18 Congressional hearing in 1974.</p> <p>19 Have you seen this document before?</p> <p>20 A. I can't say that I did or didn't. I</p> <p>21 don't recall.</p> <p>22 Q. I'm going to show you the content --</p> <p>23 the comments at the hearing.</p> <p>24 Would you go to the page 173,</p>	<p style="text-align: right;">Page 388</p> <p>1 Do you see that?</p> <p>2 A. I see that.</p> <p>3 Q. It says don't -- this is from 1974.</p> <p>4 President Nixon was in office in that -- in that</p> <p>5 time.</p> <p>6 MR. EWALD: Are you making a</p> <p>7 representation as to who is making this</p> <p>8 statement?</p> <p>9 MR. TISI: No, I am not making</p> <p>10 a statement that President Nixon is</p> <p>11 making the statement.</p> <p>12 MR. EWALD: No, I'm saying,</p> <p>13 are you making a representation who is</p> <p>14 making the statement?</p> <p>15 MR. TISI: Oh, I'll say it's</p> <p>16 Barry Castleman.</p> <p>17 MR. EWALD: All right.</p> <p>18 MR. TISI: Okay.</p> <p>19 THE WITNESS: Who is it?</p> <p>20 BY MR. TISI:</p> <p>21 Q. Barry Castleman.</p> <p>22 A. I don't know who that is.</p> <p>23 Q. At that time he was -- he was a</p> <p>24 young research student at the with the Maryland</p>
<p style="text-align: right;">Page 387</p> <p>1 please.</p> <p>2 Actually, can I see that document,</p> <p>3 please? It may have my notes on it. I'm sorry.</p> <p>4 No, it does not. There you go.</p> <p>5 Thank you.</p> <p>6 MR. EWALD: It's in the very</p> <p>7 back.</p> <p>8 THE WITNESS: 173. Okay.</p> <p>9 The whole document. I guess it goes from</p> <p>10 173 to 180.</p> <p>11 BY MR. TISI:</p> <p>12 Q. I'm just looking at 173.</p> <p>13 A. Okay.</p> <p>14 Q. In the middle of the page it says:</p> <p>15 "Before 1895, when Johnson and</p> <p>16 Johnson began selling talc -- began talc</p> <p>17 manufacture, babies were commonly dusted with corn</p> <p>18 starch; this safe substitute is still available,</p> <p>19 and at one-fourth the cost of talc. We recommend</p> <p>20 it. Don't use feminine hygiene sprays which</p> <p>21 contain talc. Avoid talc-dusted balloons, rice,</p> <p>22 prophylactics and chewing gum. If you suspect a</p> <p>23 product, write to the manufacturer -- and let use</p> <p>24 know if you discover another use of asbestos."</p>	<p style="text-align: right;">Page 389</p> <p>1 Department of Public Health.</p> <p>2 A. Yeah.</p> <p>3 Q. He goes on to say:</p> <p>4 "While many of the applications of</p> <p>5 asbestos products cannot be judged at this moment</p> <p>6 due to lack of sufficient evidence of hazardous</p> <p>7 use, still we should err on the side of prudence;</p> <p>8 we should remove a suspected product until the</p> <p>9 manufacturer proves that the item is not harmful.</p> <p>10 It is not the duty of the public interest</p> <p>11 scientist to prove whether each and every item is</p> <p>12 harmful or safe. The public has the right to</p> <p>13 demand the scientific evidence from the</p> <p>14 manufacturers of the consumer products which will</p> <p>15 otherwise simply be means to further profits at</p> <p>16 the expense of the health and safety of the</p> <p>17 American people."</p> <p>18 Do you see that?</p> <p>19 A. I see that.</p> <p>20 Q. Okay. Do you think based upon what</p> <p>21 you know it's the manufacturer J&J's</p> <p>22 responsibility to prove the product is, in fact,</p> <p>23 safe as opposed to having me sit here and prove</p> <p>24 that it's unsafe?</p>

<p style="text-align: right;">Page 390</p> <p>1 MR. EWALD: Objection to form.</p> <p>2 Legal conclusion.</p> <p>3 Go ahead.</p> <p>4 THE WITNESS: Again, you're</p> <p>5 -- you're veering off into areas that I</p> <p>6 did not --</p> <p>7 BY MR. TISI:</p> <p>8 Q. And you have no view on that?</p> <p>9 A. -- examine.</p> <p>10 Q. You have no view on that?</p> <p>11 A. No, I have no view on that.</p> <p>12 Q. Okay. Now, you've written countless</p> <p>13 tables and appendices and pages and pages and</p> <p>14 pages of discussions of asbestos in your report.</p> <p>15 True?</p> <p>16 MR. EWALD: Objection to form.</p> <p>17 Vague.</p> <p>18 Go ahead.</p> <p>19 THE WITNESS: I discussed</p> <p>20 asbestos. We talked about that this</p> <p>21 morning.</p> <p>22 BY MR. TISI:</p> <p>23 Q. It's a lot.</p> <p>24 A. That's part of what -- I don't know</p>	<p style="text-align: right;">Page 392</p> <p>1 Q. Now, you know that J&J represented</p> <p>2 that Johnson's Baby Powder and Shower to Shower</p> <p>3 was, in fact, absolutely 100 percent free of</p> <p>4 asbestos, right?</p> <p>5 A. Did you want to ask me about a</p> <p>6 specific test?</p> <p>7 Q. I'm going to -- no, I'm asking you</p> <p>8 about a particular representation.</p> <p>9 Are you aware that J&J represented</p> <p>10 that Johnson's Baby Powder and Shower to Shower</p> <p>11 were a hundred percent pure and free of asbestos?</p> <p>12 A. To the knowledge that J&J accrued</p> <p>13 over time through the multiple testings suggested</p> <p>14 that it was -- there was no asbestos.</p> <p>15 Q. I didn't ask you that question,</p> <p>16 honestly. Honestly.</p> <p>17 I asked you whether they represented</p> <p>18 that the talc was a hundred percent free of</p> <p>19 asbestos, 100 percent free pure talc.</p> <p>20 A. If you want to show me a document, I</p> <p>21 can look at it.</p> <p>22 MR. TISI: Sure. Let's do</p> <p>23 that. Let's look at Exhibit Number 38,</p> <p>24 please.</p>
<p style="text-align: right;">Page 391</p> <p>1 whether it's a lot or a little.</p> <p>2 Q. It's a majority of what you've</p> <p>3 discussed?</p> <p>4 A. I've discussed lots of things in</p> <p>5 here.</p> <p>6 Q. Okay. All right. We'll let the</p> <p>7 judge understand and take a look at your report</p> <p>8 and see how much asbestos you have discussed.</p> <p>9 But based upon everything that you</p> <p>10 know, distilling it in its most clear form, is the</p> <p>11 testing methodology used by J&J -- this really is</p> <p>12 a yes or no question -- a hundred percent</p> <p>13 sensitive for the detection of asbestos? 100</p> <p>14 percent.</p> <p>15 MR. EWALD: Objection to form.</p> <p>16 THE WITNESS: I am not</p> <p>17 opining on testing or sensitivity,</p> <p>18 reliability or validity of the testing.</p> <p>19 BY MR. TISI:</p> <p>20 Q. Okay. Well, that cuts about -- out</p> <p>21 about 90 percent of your report. So thank you.</p> <p>22 MR. EWALD: Objection to form.</p> <p>23 Mischaracterizes testimony.</p> <p>24 BY MR. TISI:</p>	<p style="text-align: right;">Page 393</p> <p>1 (Document marked for</p> <p>2 identification as Sutcliffe Exhibit 38.)</p> <p>3 BY MR. TISI:</p> <p>4 Q. It's a document that we looked at</p> <p>5 before. You can pull it out, please. It's the</p> <p>6 testimony of Mr. Hopkins.</p> <p>7 A. It's in here? Okay.</p> <p>8 Q. Oh, I'm sorry. It's not.</p> <p>9 There you go.</p> <p>10 A. Oh, is this different?</p> <p>11 Q. Yeah, it is different.</p> <p>12 A. Okay.</p> <p>13 MR. EWALD: What page?</p> <p>14 MR. TISI: 5376.</p> <p>15 THE WITNESS: Yeah, thank you.</p> <p>16 BY MR. TISI:</p> <p>17 Q. Line 21. And this is from the</p> <p>18 Ingham trial.</p> <p>19 You read the Ingham transcript,</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. It says:</p> <p>23 "Johnson & Johnson assured the world</p> <p>24 that the FDA -- and the FDA that its</p>

<p style="text-align: right;">Page 394</p> <p>1 asbestos-free. Its talc's asbestos-free, didn't 2 it?"</p> <p>3 Answer: "Yes." 4 True?</p> <p>5 A. I see that, yeah. 6 Q. Okay. And it talks about -- and it 7 says the next on 5378 line 18 it says: 8 "The truth of the matter is, even in 9 your websites y'all tell the world that your 10 product is asbestos-free, right?"</p> <p>11 Answer: "Yes." 12 Right?</p> <p>13 A. Where is that? On page 78? 14 Q. On page -- on page 5378. 15 MR. EWALD: Right below. 16 THE WITNESS: Right. Got it. 17 BY MR. TISI: 18 Q. You see that? 19 Do you see that? 20 A. I see that. 21 Q. It says: 22 "The truth of the matter is, even in 23 your websites y'all tell the world your product is 24 asbestos-free, right?"</p>	<p style="text-align: right;">Page 396</p> <p>1 "There is a difference between those 2 two, two statements, yes." 3 A. I see what's written. 4 Q. Okay. So you would agree with 5 Dr. Hopkins that there's a difference between 6 saying something is asbestos-free and something 7 saying that there's no detectable asbestos, 8 correct? 9 A. Again, I am not a toxicologist, and 10 I am not opining on that. 11 What I do know is that premier 12 scientists in the world -- Dr. Pooley, for 13 example -- examined Italian talc, examined Vermont 14 talc and found no asbestos, as well as other -- 15 other experts as well. 16 Q. Honestly, again, not answering my 17 question. 18 My question is: Is there a 19 difference between saying talc is asbestos-free 20 and talc -- there's no detectable level of -- 21 there's no detectable talc? 22 A. Again -- 23 Q. Asbestos. 24 I'm asking: Is there a difference,</p>
<p style="text-align: right;">Page 395</p> <p>1 And the answer was "Yes" by Dr. 2 Hopkins. 3 A. I see that, yeah. 4 Q. If you go to the next page 5379, the 5 question is asked then: 6 "There is a difference between 7 saying it's asbestos-free, as if you've proven 8 there's no asbestos and telling the truth, which 9 is with these tests we were not able to detect it 10 to this degree of sensitivity, isn't there?" 11 "There is a difference between those 12 two, two statements, yes." 13 Do you see that? 14 A. Will you just tell me what line 15 you're on? I'm sorry. 16 Q. Yeah. It's line -- line 19, 42. 17 I'm sorry. It's line 2 to line 8. 18 A. So go from here to here. Line what? 19 Q. "There is a difference between 20 saying it's asbestos-free, as if you've proven 21 there's no asbestos and telling the truth, which 22 is with these tests we were not able to detect it 23 to this large degree of sensitivity, isn't there?" 24 And the answer:</p>	<p style="text-align: right;">Page 397</p> <p>1 in your mind, between those two things? 2 I'm not asking you to tell me the 3 sensitivity of the test. 4 I'm saying: In your mind, is there 5 a difference? 6 A. Again, I didn't opine. 7 Q. You can't? 8 A. I'm not opining on that. 9 Q. Okay. But you are testifying -- you 10 can opine about Dr. Pooley and all kinds of stuff, 11 but you're not able to tell me whether there's a 12 difference between saying something is 13 asbestos-free and something cannot detect 14 asbestos? 15 MR. EWALD: Objection. Form. 16 Argumentative. 17 Go ahead. 18 BY MR. TISI: 19 Q. You're not able to do that? 20 A. I am not opining on that. 21 Q. Okay. Okay. Exhibit 33. 22 Do you know how much asbestos -- 23 now, it's fair to say we don't know the exact 24 number, but it's fair to say between the 1970s and</p>

<p style="text-align: right;">Page 398</p> <p>1 2000 -- the 2000s that J&J sold a lot of talc?</p> <p>2 A. I have no idea.</p> <p>3 Q. You don't have any idea how much</p> <p>4 tons and tons of talc, tons and tons of Johnson's</p> <p>5 Baby Powder.</p> <p>6 You have absolutely no idea how</p> <p>7 much?</p> <p>8 A. I have no idea.</p> <p>9 Q. Okay. Do you have any idea how much</p> <p>10 talc was actually tested using the testing</p> <p>11 methodology that they used?</p> <p>12 A. Again, I'm not -- I know the tests</p> <p>13 but, no, I'm not -- I haven't examined that.</p> <p>14 Q. Would it surprise you that less than</p> <p>15 2 teaspoons of talc has been tested over that</p> <p>16 50-year period?</p> <p>17 A. Again, I'm not --</p> <p>18 Q. You don't know that?</p> <p>19 A. I -- I don't know that. I'm not</p> <p>20 opining on those issues.</p> <p>21 Q. So you don't know how much talc was</p> <p>22 actually tested, do you?</p> <p>23 A. I know that there are multiple</p> <p>24 levels of testing that were conducted over decades</p>	<p style="text-align: right;">Page 400</p> <p>1 BY MR. TISI:</p> <p>2 Q. Except for those?</p> <p>3 A. I'm -- I'm opining in the larger</p> <p>4 sense --</p> <p>5 Q. Okay.</p> <p>6 A. -- of the fact that the test -- that</p> <p>7 testing was created, that multiple levels of</p> <p>8 testing were created, that the -- that the -- that</p> <p>9 in addition to J4-1, J&J went beyond the industry</p> <p>10 standard since the 1970s.</p> <p>11 Q. And you can't tell me how much talc</p> <p>12 was actually tested in five decades, can you?</p> <p>13 A. I'm not a toxicologist --</p> <p>14 MR. EWALD: Objection to form.</p> <p>15 THE WITNESS: -- or a</p> <p>16 microscopist.</p> <p>17 BY MR. TISI:</p> <p>18 Q. It doesn't take a --</p> <p>19 A. I'm not looking at that.</p> <p>20 Q. I'm not asking you how much is in a</p> <p>21 sample.</p> <p>22 I'm asking you: How much talc was</p> <p>23 tested over -- over five decades? Was it a</p> <p>24 thimble full? Was it a box full? Was it a</p>
<p style="text-align: right;">Page 399</p> <p>1 and that --</p> <p>2 Q. But you don't know how much talc was</p> <p>3 tested?</p> <p>4 A. -- they're using -- I'm not opining</p> <p>5 on the way testing were done.</p> <p>6 MR. EWALD: Are you talking</p> <p>7 about all testing methods or just one?</p> <p>8 BY MR. TISI:</p> <p>9 Q. I'm testing you -- I'm asking you:</p> <p>10 How much talc was tested using Johnson & Johnson?</p> <p>11 A. I -- I don't know.</p> <p>12 Q. You don't know?</p> <p>13 A. No.</p> <p>14 Q. Have you seen documents that says</p> <p>15 there's a detectable limit that allows .5 percent</p> <p>16 asbestos?</p> <p>17 A. Again, I'm not opining on issues</p> <p>18 related to testing.</p> <p>19 Q. Okay. Except for the 60 out of --</p> <p>20 out of 80 pages where you talk about asbestos</p> <p>21 testing?</p> <p>22 MR. EWALD: Objection to form.</p> <p>23 Argumentative.</p> <p>24 THE WITNESS: Okay.</p>	<p style="text-align: right;">Page 401</p> <p>1 dumpster full? How much talc was tested?</p> <p>2 MR. EWALD: And are you saying</p> <p>3 by J4-1 or other methods?</p> <p>4 MR. TISI: I'm saying by J4-1.</p> <p>5 THE WITNESS: I don't know how</p> <p>6 much was tested.</p> <p>7 BY MR. TISI:</p> <p>8 Q. By any method how much. How many</p> <p>9 tons of talc were tested?</p> <p>10 A. All I can say is that I reviewed</p> <p>11 thousands of tests and took a look at them, and I</p> <p>12 reported them in here.</p> <p>13 Q. And you don't know whether or not it</p> <p>14 was testing the size of a -- of a quarter of a</p> <p>15 stamp (indicates) or whether it was testing the</p> <p>16 size of this table? You don't know?</p> <p>17 A. Again, those questions are left for</p> <p>18 people who are testing experts.</p> <p>19 MR. TISI: All right. Okay.</p> <p>20 Let me see Exhibit Number 40, please.</p> <p>21 (Document marked for</p> <p>22 identification as Sutcliffe Exhibit 40.)</p> <p>23 BY MR. TISI:</p> <p>24 Q. I think this was one of the</p>

<p style="text-align: right;">Page 402</p> <p>1 documents you reviewed, but if you don't remember 2 it. Here's Exhibit Number 40. It is an FDA 3 meeting in July of 2000 -- of 1975. 4 Have you seen this document before? 5 A. It looks familiar but, honestly, it 6 could be. 7 Q. Do you remember they discussed the 8 detection limits of talc by the method -- the CFTA 9 method being .5 percent? 10 A. Again, I know that -- I know about 11 the round-robin testing. I'm not opining on the 12 tests in particular. 13 Q. I'm not asking you the tests in 14 particular. 15 I'm asking you the detection limits. 16 What were the detection limits of 17 the -- of the CFTA testing, the J4-1? 18 MR. EWALD: CTFA? 19 BY MR. TISI: 20 Q. CTFA. 21 A. CTFA. 22 I'm not opining on what the limits 23 are. 24 Q. Okay. Except in your report at the</p>	<p style="text-align: right;">Page 404</p> <p>1 A. -- and microscopists. 2 MR. TISI: And if you go to 3 the Exhibit Number 41, please. 4 (Document marked for 5 identification as Sutcliffe Exhibit 41.) 6 BY MR. TISI: 7 Q. This is the document that I think 8 you were alluding to. 9 Is this the IWGACP document? 10 A. Yes. Yeah. 11 Q. This is -- tell me what this is. 12 A. Yeah. This is their -- their -- 13 Q. Who's they? 14 A. The IWGACP. 15 Q. And who are they? 16 A. It's a group of people put together 17 by the FDA to talk about these issues. 18 Q. And can you read what's on page 4, 19 the third paragraph, please, and read it into the 20 record, please. 21 A. Page 4, the third paragraph? 22 Q. Uh-huh. 23 A. "In 1976, the cosmetics industry 24 voluntarily implemented a protocol to test</p>
<p style="text-align: right;">Page 403</p> <p>1 very -- on D-1, the footnote on D-1, it says: 2 "Testing methods have limits of 3 detection." 4 Except for that? 5 A. I was highlighting that they have 6 the limits, but I'm not making judgments about 7 that. 8 Q. Okay. But you will agree, apart 9 from the judgment of how much limits, you know 10 that there are detection limits with the tests 11 that were being done because you noted it in your 12 report? 13 A. I understand that there are 14 specifications for the test. 15 Q. And so you know that the tests were 16 not 100 percent effective? You do know that, 17 right? 18 A. Again -- 19 MR. EWALD: Objection to form. 20 THE WITNESS: -- those -- 21 those questions are better left to the 22 toxicologists -- 23 BY MR. TISI: 24 Q. Okay.</p>	<p style="text-align: right;">Page 405</p> <p>1 cosmetic talc for amphibole asbestos minerals 2 using the CTFA J4-1 method in response to test 3 results indicating the presence of asbestos. Talc 4 suppliers to the pharmaceutical industry use a 5 similar method to certify that talc meets the 6 United States Pharmacopeia's (USP's) requirement 7 for 'Absence of Asbestos.'" 8 Is it too fast? Okay. 9 "To date, both methods rely on 10 screening techniques [X-ray diffraction (XRD) or 11 infrared (IR) spectroscopy] and require optical 12 microscopy [polarized light microscopy (PLM)] 13 only if the screening test is positive. These two 14 published protocols have long-recognized 15 shortcomings in specificity and sensitivity to 16 detect the presence of asbestos and similar 17 mineral particles that may pose a health concern 18 (see Appendix F). For example, recent testing" -- 19 Q. No, that's all right. You can stop 20 right there. 21 A. Okay. 22 Q. You don't need to keep going. You 23 can read the rest if you want to, but, I mean, 24 that's the part I wanted to ask you about.</p>

<p style="text-align: right;">Page 406</p> <p>1 A. Okay.</p> <p>2 Q. Now, first of all, it talks about</p> <p>3 the protocol to testing for talc.</p> <p>4 It talks about it as being for</p> <p>5 amphibole asbestos, correct?</p> <p>6 A. Yes, I think that's what I mentioned</p> <p>7 earlier.</p> <p>8 Q. Okay. And it also says -- and you</p> <p>9 said that it is debated at the FDA about the</p> <p>10 testing methodology, but this says</p> <p>11 "long-recognized shortcomings in specificity and</p> <p>12 sensitivity," correct?</p> <p>13 A. I see what's written here.</p> <p>14 Q. Okay. Well, what's written here is</p> <p>15 what I said was written there, which is there are</p> <p>16 long-recognized shortcomings in specificity and</p> <p>17 sensitivity to the testing methodology used by</p> <p>18 talc manufacturers, correct?</p> <p>19 A. Right. I see what's written.</p> <p>20 Q. Well, I know you see what's written.</p> <p>21 I could ask -- seriously, I could ask the</p> <p>22 receptionist if she can see what's written.</p> <p>23 I'm asking you: Does that help you</p> <p>24 with what we testified to before that it's not</p>	<p style="text-align: right;">Page 408</p> <p>1 are -- I'm not going to fight with you.</p> <p>2 You have relied on the IWGACP</p> <p>3 report, okay, in your opinions in this case, and</p> <p>4 the report says there were long-recognized</p> <p>5 shortcomings of specificity and sensitivity.</p> <p>6 And I'm asking you whether based</p> <p>7 upon your review of the evidence, J&J recognized</p> <p>8 there were long-recognized shortcomings in</p> <p>9 specificity and sensitivity.</p> <p>10 I'm not asking whether you used the</p> <p>11 best test, the most reasonable test, what the</p> <p>12 detection limits were. I'm not asking you any of</p> <p>13 that stuff.</p> <p>14 Based upon your review, did you --</p> <p>15 do you see whether or not J&J recognized that</p> <p>16 there were shortcomings with respect to the</p> <p>17 testing that it was being -- that it was using?</p> <p>18 A. Again -- again, I know what J&J was</p> <p>19 doing.</p> <p>20 Q. Okay.</p> <p>21 A. That it was -- it worked</p> <p>22 collaboratively with the FDA, with others in the</p> <p>23 industry, with experts to develop the testing</p> <p>24 methods and it has been applying those methods,</p>
<p style="text-align: right;">Page 407</p> <p>1 just debate, but there's long-recognized</p> <p>2 shortcomings in the specificity and sensitivity to</p> <p>3 detect asbestos?</p> <p>4 MR. EWALD: Objection to form.</p> <p>5 Incomplete.</p> <p>6 THE WITNESS: I see what's</p> <p>7 written there, and I also know what J&J</p> <p>8 has been doing over decades.</p> <p>9 BY MR. TISI:</p> <p>10 Q. I'm asking: Did J&J recognize that</p> <p>11 there was long-recognized shortcomings in</p> <p>12 specificity and sensitivity of the tests that it</p> <p>13 was being used?</p> <p>14 A. I think that J&J was -- was applying</p> <p>15 the most sensitive methods that exist today.</p> <p>16 Q. But it was not a hundred percent</p> <p>17 sensitive, was it?</p> <p>18 A. Again, I am not a toxicologist or</p> <p>19 microscopist. So I am not opining on the</p> <p>20 particular details of testing.</p> <p>21 Q. I'm not asking you to the details of</p> <p>22 testing.</p> <p>23 A. Yes, you are.</p> <p>24 Q. No, I'm not. I'm asking you, you</p>	<p style="text-align: right;">Page 409</p> <p>1 which the FDA and the IWGACP say are the most</p> <p>2 appropriate methods to be using right at the</p> <p>3 moment.</p> <p>4 Q. Really? You think that the IWGACP</p> <p>5 says that?</p> <p>6 A. I believe in this document somewhere</p> <p>7 it says that, you know, XRD, PLM, and TEM should</p> <p>8 be the methods used at the moment.</p> <p>9 Q. Who is Imerys?</p> <p>10 A. Imerys is a -- was a company that</p> <p>11 took over -- took over the -- I have to go back</p> <p>12 here.</p> <p>13 Q. Actually, they had different names,</p> <p>14 but they were -- they were Rio Tinto or Luzenac,</p> <p>15 but they were also -- the same company, correct?</p> <p>16 A. Right. Well, it was Luzenac, then</p> <p>17 Imerys, and then it went to another one.</p> <p>18 Q. And if you look at F-3.i of your</p> <p>19 report, which is the --</p> <p>20 A. Yeah. Got it.</p> <p>21 Q. Okay.</p> <p>22 A. Yeah.</p> <p>23 Q. It has the dates. They were the</p> <p>24 primary mining company supplying Johnson & Johnson</p>

<p style="text-align: right;">Page 410</p> <p>1 talc; is that true?</p> <p>2 A. They were doing routine testing.</p> <p>3 Q. They were doing the vast majority of</p> <p>4 the testing, correct?</p> <p>5 MR. EWALD: Objection to form.</p> <p>6 THE WITNESS: Not for the</p> <p>7 whole time, the whole decades.</p> <p>8 BY MR. TISI:</p> <p>9 Q. Well, they first -- on the ground</p> <p>10 ore, they did testing 2003 to 2020, correct?</p> <p>11 A. 2003 to -- well, 2000 --</p> <p>12 Q. 2003 to 2020?</p> <p>13 A. Well, I have in my -- on my document</p> <p>14 2021, I think. But, anyway, yeah, they were --</p> <p>15 Q. Okay. But the ground ore --</p> <p>16 A. They were testing the China talc.</p> <p>17 Q. Well, I have here. I'm looking</p> <p>18 maybe on number 1, ground talc ore material. It</p> <p>19 was being monthly tested from 2003 to 2020 using</p> <p>20 XRD, PLM, and TEM.</p> <p>21 Do you see that?</p> <p>22 A. I do see that.</p> <p>23 Q. Okay.</p> <p>24 A. I -- yeah.</p>	<p style="text-align: right;">Page 412</p> <p>1 MR. TISI: I said --</p> <p>2 MR. EWALD: So I want to know</p> <p>3 what the time frame is.</p> <p>4 MR. TISI: I'm going to</p> <p>5 continue to ask my questions.</p> <p>6 BY MR. TISI:</p> <p>7 Q. From 2003 to 2020, which is a period</p> <p>8 of almost 20 years?</p> <p>9 A. 17 years.</p> <p>10 Q. Right.</p> <p>11 They've done the state of the art</p> <p>12 testing, correct?</p> <p>13 A. They have done the testing for 17</p> <p>14 years.</p> <p>15 Q. And they've done the state of the</p> <p>16 art. There's nothing better than what they did,</p> <p>17 correct?</p> <p>18 A. Again, what I know is that they were</p> <p>19 using the three levels of testing over 17 years.</p> <p>20 Q. The most advanced testing that was</p> <p>21 state of the art, right?</p> <p>22 A. The testing that was collaboratively</p> <p>23 developed over time, they have been using.</p> <p>24 Q. The ones that J&J fully understood</p>
<p style="text-align: right;">Page 411</p> <p>1 Q. Okay. They did -- they looked at</p> <p>2 finished talc between 1993 and 2003 using XRD and</p> <p>3 PLM, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. And they did additional</p> <p>6 testing monthly between 2009 and 2020 doing XRD,</p> <p>7 PLM, and TEM, according to you, correct?</p> <p>8 A. Yes.</p> <p>9 Q. They did a lot of testing for the</p> <p>10 vast majority of the time that's relevant in this</p> <p>11 case, 2003 to 2020.</p> <p>12 They did a lot of testing using all</p> <p>13 the test methodology you say were standard of art,</p> <p>14 right?</p> <p>15 MR. EWALD: I'm sorry. What</p> <p>16 time frame are you representing relevant</p> <p>17 to this case?</p> <p>18 MR. TISI: No, I'm saying --</p> <p>19 MR. EWALD: What is the time</p> <p>20 frame relevant to this case?</p> <p>21 MR. TISI: Actually, I think</p> <p>22 the full time is relevant to this case.</p> <p>23 MR. EWALD: You said vast</p> <p>24 majority.</p>	<p style="text-align: right;">Page 413</p> <p>1 what they were doing because they were working</p> <p>2 together, right?</p> <p>3 A. Again, they were -- I studied J&J.</p> <p>4 I wasn't studying Imerys.</p> <p>5 Q. Okay.</p> <p>6 A. I know that Imerys was doing</p> <p>7 testing.</p> <p>8 Q. Well, you showed a lot of test</p> <p>9 results that Imerys did, correct?</p> <p>10 A. I included test results that were</p> <p>11 being done.</p> <p>12 Q. Okay. Would you agree with me that</p> <p>13 Imerys is a -- is a -- I mean, J&J wouldn't rely</p> <p>14 on a company to do testing that was not an expert</p> <p>15 in testing, would it?</p> <p>16 A. Again, I didn't study Imerys. I</p> <p>17 know that they're a supplier and there are</p> <p>18 supplier standards, and I know that they were</p> <p>19 doing the three levels of testing.</p> <p>20 Q. And they were doing the testing for</p> <p>21 a large part of the time, correct, using --</p> <p>22 MR. EWALD: Objection to form.</p> <p>23 Vague and ambiguous.</p> <p>24 BY MR. TISI:</p>

<p style="text-align: right;">Page 414</p> <p>1 Q. From 2003 to 2020, they were doing 2 levels of testing on ground talc, finished talc -- 3 ground talc and finished talc, right? 4 A. As we read here, they were doing 5 testing on the -- on the grinding of the ground 6 talc, as we know, on the finished talc, and the 7 additional testing. 8 MR. TISI: Okay. Show you 9 Exhibit Number 44, which is from 2009. 10 (Document marked for 11 identification as Sutcliffe Exhibit 44.) 12 THE WITNESS: Are we done with 13 this one? 14 BY MR. TISI: 15 Q. This is from Rio Tinto, which is the 16 same company as Imerys, correct? 17 A. I think it switched -- I think it -- 18 Q. Switched names, but it's the same 19 company? 20 A. It switched names. 21 Q. You see the section that says "Key 22 Messages"? 23 Feel free to read the document if 24 you wish.</p>	<p style="text-align: right;">Page 416</p> <p>1 MR. EWALD: Fifth one. 2 BY MR. TISI: 3 Q. Fifth one. 4 It says: 5 "We also updated the letters so that 6 they are more accurate: 7 "We can assure customers that our 8 products meet the most stringent standards for 9 asbestos, and that we cannot detect asbestos above 10 applicable testing limits." 11 And that's what we've been 12 discussing, right? 13 A. Again, you were discussing that. I 14 was -- 15 Q. Oh. Yeah, you were avoiding the 16 answers. 17 A. No, I'm not avoiding the answers. 18 MR. EWALD: Objection to form. 19 Argumentative. 20 MR. TISI: Okay. Okay. 21 THE WITNESS: I'm not opining 22 on that. 23 BY MR. TISI: 24 Q. Okay. Next one it says:</p>
<p style="text-align: right;">Page 415</p> <p>1 A. (Reviews document.) 2 MR. EWALD: While she's 3 reviewing, we've been going over an hour 4 and 15 minutes. Do you want to take a 5 break or something? 6 MR. TISI: We're kind of 7 almost done, actually. 8 MR. EWALD: That's what I 9 thought. I didn't want to, you know, 10 presume anything. 11 MR. TISI: No, I'm almost 12 done. 13 MR. EWALD: So why don't you 14 continue that and then we can take a 15 break. 16 THE WITNESS: Okay. 17 BY MR. TISI: 18 Q. See, it says the fourth bullet point 19 down: 20 "We also updated the letters so that 21 they are more accurate." 22 Do you see that they're updating a 23 letter about the quality assurance of talc? 24 A. In the fourth?</p>	<p style="text-align: right;">Page 417</p> <p>1 "We cannot say our products are 2 'asbestos-free' -- the scientific instruments that 3 would allow us to make that statement accurately 4 have not yet been invented." 5 Do you see that? 6 A. I see that. 7 Q. Okay. And that would have been 8 something that was well-known and understood at 9 the time, correct? 10 A. Again, that's a question that other 11 experts could really take on. 12 Q. Okay. So let me -- let me ask you 13 this question. 14 If that were true, if the mining 15 company that actually did the testing from 2003 to 16 2021 were accurate, and they said the testing 17 instruments haven't even been invented that could 18 say they were asbestos-free, was it reasonable for 19 J&J to tell customers and the FDA that their talc 20 was asbestos-free? 21 A. Again, I -- I mean, all I know that 22 the -- that many experts have testified to the 23 fact that there was no asbestos in J&J's talc 24 mines.</p>

<p style="text-align: right;">Page 418</p> <p>1 Q. Which experts have said that?</p> <p>2 A. Dr. Pooley.</p> <p>3 Q. Okay.</p> <p>4 A. And Dr. McCrone and --</p> <p>5 Q. From the '70s?</p> <p>6 A. From the '70s.</p> <p>7 Q. Okay. Now we're talking about --</p> <p>8 A. And later from the '80s.</p> <p>9 Q. Okay. Okay. Was Dr. Pooley saying</p> <p>10 that in the '80s?</p> <p>11 A. Dr. Pooley did. He discussed the</p> <p>12 Italian mines and the -- and the Vermont mines.</p> <p>13 Q. Okay. Now, we have Rio Tinto in</p> <p>14 2009 with the most advanced technology doing the</p> <p>15 best that they could with all three levels of</p> <p>16 testing, right?</p> <p>17 A. Again, I'm not, you know, I'm not a</p> <p>18 person to ask on these questions.</p> <p>19 Q. Okay. You discuss Alice Blount.</p> <p>20 I'm really almost done, and then we</p> <p>21 can take a break.</p> <p>22 You discuss Alice Blount, correct,</p> <p>23 in your report?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 420</p> <p>1 MR. EWALD: I will say, if</p> <p>2 we're going to go through three more</p> <p>3 documents --</p> <p>4 MR. TISI: No, we'll take --</p> <p>5 we'll take a break.</p> <p>6 MR. EWALD: -- take a quick</p> <p>7 break.</p> <p>8 MR. TISI: So long as we have</p> <p>9 an agreement not to talk about this</p> <p>10 topic.</p> <p>11 MR. EWALD: I will not talk</p> <p>12 about the topic.</p> <p>13 MR. TISI: No problem.</p> <p>14 MR. EWALD: That works.</p> <p>15 MR. TISI: I believe you.</p> <p>16 You're a man of your honor.</p> <p>17 (Recess: 4:14 p.m. -</p> <p>18 4:20 p.m.).</p> <p>19 (Document marked for</p> <p>20 identification as Sutcliffe Exhibit 45.)</p> <p>21 BY MR. TISI:</p> <p>22 Q. So, Dr. Sutcliffe, I'm handing what</p> <p>23 I have marked actually from J&J's files a copy of</p> <p>24 the 1991 Blount paper, which I assume you've seen</p>
<p style="text-align: right;">Page 419</p> <p>1 Q. Okay. You understand she was a</p> <p>2 consultant for J&J, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you're aware that she published</p> <p>5 a paper in 1991 in which she did high density</p> <p>6 separation and found that there was asbestos in</p> <p>7 Johnson & Johnson talc, correct?</p> <p>8 A. Actually, I can't agree with that</p> <p>9 because it's hard to know what she found.</p> <p>10 Q. Oh, it's hard to know what she</p> <p>11 found.</p> <p>12 A. Exactly.</p> <p>13 Q. She told them, she told them that</p> <p>14 there was -- she told J&J that there was levels of</p> <p>15 asbestos in Johnson & Johnson talc.</p> <p>16 You know that. True?</p> <p>17 A. Again, I need -- if you want me to</p> <p>18 take a look at a document --</p> <p>19 Q. Sure. Let's do that.</p> <p>20 A. -- that would be great.</p> <p>21 MR. TISI: Can I show you</p> <p>22 Exhibit 45, 46, and 47.</p> <p>23 First of all, this is the --</p> <p>24 this is from Johnson & Johnson files.</p>	<p style="text-align: right;">Page 421</p> <p>1 before?</p> <p>2 A. Yes.</p> <p>3 Q. And this was an article.</p> <p>4 Was it peer-reviewed? Do you know?</p> <p>5 A. You know, it's in the Environmental</p> <p>6 Health Perspectives. I'm assuming it is. I don't</p> <p>7 know. I don't think it's been cited much.</p> <p>8 Q. Okay. Do you read articles that</p> <p>9 haven't been cited much?</p> <p>10 A. Do I?</p> <p>11 Q. Yeah.</p> <p>12 A. I have a few, but I have, you know,</p> <p>13 I have a lot of citations.</p> <p>14 Q. Okay. So this is entitled</p> <p>15 "Amphibole Content" -- by the way, did I ask you</p> <p>16 whether it was cited much?</p> <p>17 A. I beg your pardon?</p> <p>18 Q. Did I ask you whether it was cited</p> <p>19 much?</p> <p>20 A. Whether this was cited much?</p> <p>21 Q. Yeah.</p> <p>22 A. I just happened to mention it.</p> <p>23 Q. Oh, I know.</p> <p>24 How did you find out it wasn't cited</p>

<p style="text-align: right;">Page 422</p> <p>1 much?</p> <p>2 A. I looked.</p> <p>3 Q. Okay. It's entitled "Amphibole</p> <p>4 Content of Cosmetic and Pharmaceutical Talcs."</p> <p>5 Correct?</p> <p>6 A. Yes.</p> <p>7 Q. They talk about a new high</p> <p>8 density-optical method for testing talc, correct?</p> <p>9 A. I think this has -- this has to do</p> <p>10 with test preparation.</p> <p>11 Q. Right. That wasn't my question.</p> <p>12 It's a high density-optical method</p> <p>13 of testing, correct?</p> <p>14 The first sentence.</p> <p>15 A. It doesn't say "high." It says "a</p> <p>16 new density."</p> <p>17 Q. "Optical method"?</p> <p>18 A. "Optical method."</p> <p>19 Q. Okay. And it says the results are</p> <p>20 one:</p> <p>21 "Only one was found to contain an</p> <p>22 amphibole particle size distribution typical of</p> <p>23 asbestos."</p> <p>24 Do you see that?</p>	<p style="text-align: right;">Page 424</p> <p>1 described in this particular paper.</p> <p>2 Q. And where did you get that</p> <p>3 information?</p> <p>4 A. It's that I read this paper.</p> <p>5 Q. Oh, you did it.</p> <p>6 So the lawyers didn't tell you that?</p> <p>7 A. No, of course not.</p> <p>8 Q. Oh, of course not. Okay. All</p> <p>9 right.</p> <p>10 Now, you know that -- that she has</p> <p>11 insisted over time that Johnson's Baby Powder</p> <p>12 actually has trace amounts of asbestos, correct?</p> <p>13 A. I -- I know what she wrote in a</p> <p>14 letter. I've seen that, but it's ambiguous.</p> <p>15 Q. Oh, it's ambiguous.</p> <p>16 A. Yes, it is.</p> <p>17 MR. TISI: Well, we'll talk</p> <p>18 about it. I'm going ask you about it's</p> <p>19 ambiguous.</p> <p>20 Here is Exhibit Number 46,</p> <p>21 which is March 16, 1998.</p> <p>22 (Document marked for</p> <p>23 identification as Sutcliffe Exhibit 46.)</p> <p>24 BY MR. TISI:</p>
<p style="text-align: right;">Page 423</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And you know that to be the</p> <p>3 one sample "I" on Table 1 that was Johnson &</p> <p>4 Johnson's talc. True?</p> <p>5 A. No.</p> <p>6 Q. You don't know that?</p> <p>7 A. No.</p> <p>8 Q. Okay. On the very last page of the</p> <p>9 document, which was in J&J's files, it has a key.</p> <p>10 Have you seen that document?</p> <p>11 A. I have.</p> <p>12 Q. Okay. And it indicates "I" being</p> <p>13 Windsor, Johnson & Johnson baby powder.</p> <p>14 You see that?</p> <p>15 A. I see what it says.</p> <p>16 Q. Okay.</p> <p>17 A. But I don't know what that means.</p> <p>18 Q. Okay. You don't know that J&J --</p> <p>19 that the key at the back says -- it says "I -</p> <p>20 "Windsor - J&J JBP." That stands for Johnson's</p> <p>21 Baby Powder.</p> <p>22 You don't know that to be true?</p> <p>23 A. What I know is that it's</p> <p>24 inconsistent with the way that the sample is</p>	<p style="text-align: right;">Page 425</p> <p>1 Q. And this was before there was any</p> <p>2 Johnson's Baby Powder ovarian cancer linkage, and</p> <p>3 I will represent to you that that's the case.</p> <p>4 And this is a letter to John</p> <p>5 O'Shaughnessy, who, of course, we've seen during</p> <p>6 the course of this deposition, is the products</p> <p>7 liability lawyer for J&J, correct?</p> <p>8 MR. EWALD: Objection. Form.</p> <p>9 Foundation. Mischaracterizes.</p> <p>10 THE WITNESS: I see who the</p> <p>11 letter is from and who it's going to.</p> <p>12 BY MR. TISI:</p> <p>13 Q. And in the second paragraph, it says</p> <p>14 that, in her opinion, commercial talcum powder</p> <p>15 preparations, including Johnson's Baby Powder,</p> <p>16 contain trace amount of asbestos.</p> <p>17 Do you see that?</p> <p>18 A. I see that line.</p> <p>19 Q. And you discount that?</p> <p>20 A. Well, number one, we don't know what</p> <p>21 she's talking about, really. But she also said</p> <p>22 that of "all the powders she tested, including</p> <p>23 Johnson & Johnson's Baby Powder were well below</p> <p>24 acceptable limits and that she considered Vermont</p>

<p style="text-align: right;">Page 426</p> <p>1 talc as some of the purest talc available."</p> <p>2 So that's what she said.</p> <p>3 Q. She also said it contains trace</p> <p>4 amounts of asbestos?</p> <p>5 A. You know what? I don't know what</p> <p>6 that means.</p> <p>7 Q. You don't know what that means,</p> <p>8 except what it says?</p> <p>9 A. I -- I --</p> <p>10 Q. Which is it contains trace amount of</p> <p>11 asbestos?</p> <p>12 A. I, you know, she stated she didn't</p> <p>13 think that whatever amount of asbestos that might</p> <p>14 be present in baby powder was harmful.</p> <p>15 Q. Okay. She doesn't know that.</p> <p>16 A. That the one talc was blown out of</p> <p>17 proportion and that she has a very high opinion of</p> <p>18 Johnson & Johnson Baby Powder.</p> <p>19 Q. Understood. I hear what -- I hear</p> <p>20 what you're saying and that's the company talking</p> <p>21 points, and I get it. I totally get it. Okay?</p> <p>22 But now my question is --</p> <p>23 MR. EWALD: Completely leading</p> <p>24 and argumentative.</p>	<p style="text-align: right;">Page 428</p> <p>1 wouldn't it be important to know what she did and</p> <p>2 what investigation was done or not done?</p> <p>3 A. Number one, I don't think I'm</p> <p>4 studying patient safety, but number two, I think</p> <p>5 that, you know, I took this into account. I put</p> <p>6 it into context.</p> <p>7 MR. TISI: Next letter is</p> <p>8 Exhibit Number 47, which is a letter from</p> <p>9 Alice Blount dated April 27, 1998.</p> <p>10 (Document marked for</p> <p>11 identification as Sutcliffe Exhibit 47.)</p> <p>12 BY MR. TISI:</p> <p>13 Q. Again, I assume you've seen this</p> <p>14 letter.</p> <p>15 A. (Reviews document.)</p> <p>16 Q. You see where she writes:</p> <p>17 "As I told you, I believe that</p> <p>18 Johnson & Johnson's Vermont talc contains trace</p> <p>19 amounts of asbestos which are well below those</p> <p>20 specified by OSHA."</p> <p>21 Do you see that?</p> <p>22 A. Again, I see what you're saying.</p> <p>23 Q. Okay. But she also says that the</p> <p>24 specified limit was .1 percent, correct?</p>
<p style="text-align: right;">Page 427</p> <p>1 BY MR. TISI:</p> <p>2 Q. My question had nothing to do with</p> <p>3 health effects, did it?</p> <p>4 A. I think I answered your question</p> <p>5 that I did not --</p> <p>6 Q. No. My question was --</p> <p>7 A. That I did not --</p> <p>8 Q. My question was: Did she say -- did</p> <p>9 she say that, in her opinion, Johnson & Johnson</p> <p>10 had trace amounts of asbestos?</p> <p>11 A. Actually, this is reporting what</p> <p>12 she's -- this is like secondary reporting. So I</p> <p>13 don't know what she said specifically.</p> <p>14 Q. Okay. Do you know whether or not</p> <p>15 Mr. O'Shaughnessy actually followed up with her to</p> <p>16 see whether or not to clear up the ambiguity that</p> <p>17 you say is contained in this letter?</p> <p>18 A. I know it's a thin record. I don't</p> <p>19 know what happened or what didn't happen.</p> <p>20 Q. Wouldn't that be important to</p> <p>21 know --</p> <p>22 A. So I can't say.</p> <p>23 Q. -- if you're doing sensemaking to</p> <p>24 find out whether they cared about patient safety,</p>	<p style="text-align: right;">Page 429</p> <p>1 A. I see the sentence there.</p> <p>2 Q. It says:</p> <p>3 "Although my papers report an</p> <p>4 improved method for analysis, the determination</p> <p>5 for the sample labeled 'I' (Johnson & Johnson's</p> <p>6 Vermont talc) have been done by the traditional</p> <p>7 methods as well."</p> <p>8 Do you see that?</p> <p>9 A. That's in the 1990 paper.</p> <p>10 Q. Right.</p> <p>11 But she -- the label sample was "I,"</p> <p>12 correct?</p> <p>13 A. In the 1990 paper.</p> <p>14 Q. Right.</p> <p>15 And the same -- the same samples</p> <p>16 were used in -- in the 1990 paper?</p> <p>17 A. Actually, that's really not correct.</p> <p>18 Q. Oh.</p> <p>19 A. We don't really know. She doesn't</p> <p>20 remember. In her deposition, she told us she did</p> <p>21 not remember.</p> <p>22 Q. Okay. All right. It's your story</p> <p>23 and you're sticking with it, right?</p> <p>24 A. I --</p>

<p style="text-align: right;">Page 430</p> <p>1 MR. EWALD: Objection.</p> <p>2 Argumentative.</p> <p>3 BY MR. TISI:</p> <p>4 Q. All right.</p> <p>5 MR. GOLOMB: You don't have to</p> <p>6 smile.</p> <p>7 MR. EWALD: Smart forum. So.</p> <p>8 BY MR. TISI:</p> <p>9 Q. All right. Have you seen, as an</p> <p>10 organizational expert, this density method that</p> <p>11 she describes as being the better (indicates)</p> <p>12 testing methodology in her 1991 paper -- 1991</p> <p>13 paper? Have you seen J&J do any analysis of that</p> <p>14 methodology as being more sensitive than the one</p> <p>15 that they were using?</p> <p>16 A. I have not investigated that. I</p> <p>17 know over decades that at times J&J has been</p> <p>18 concerned with concentration methods, but it was</p> <p>19 not -- but what they were doing was -- was better</p> <p>20 than -- than that.</p> <p>21 Q. Well, I'm not -- actually, I'm just</p> <p>22 not -- again, I'm not asking that question.</p> <p>23 I'm asking the question: Have you</p> <p>24 seen any documents in the record where J&J does a</p>	<p style="text-align: right;">Page 432</p> <p>1 be very long.</p> <p>2 But I want to start with something</p> <p>3 you said at the very end. You said "I don't study</p> <p>4 patient safety."</p> <p>5 Did I get that right?</p> <p>6 A. Well, I do study patient safety, but</p> <p>7 you mentioned patient safety. I should say, I</p> <p>8 don't think about it as related to this case.</p> <p>9 Q. Right.</p> <p>10 So in this case, you're not --</p> <p>11 patient safety is not a factor?</p> <p>12 A. But -- well, I mean, I'm not looking</p> <p>13 at patients.</p> <p>14 Q. Right.</p> <p>15 A. Right.</p> <p>16 Q. In this case, you're looking at the</p> <p>17 conduct of the company?</p> <p>18 A. I'm sorry, I --</p> <p>19 Q. In this case, you were asked to look</p> <p>20 at the conduct of the company?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. Let me just clarify some --</p> <p>23 some definitions here.</p> <p>24 First of all, in your -- in your</p>
<p style="text-align: right;">Page 431</p> <p>1 comprehensive analysis of the methodology that was</p> <p>2 described by Dr. Blount in her 1991 article?</p> <p>3 A. I don't recall one way or another.</p> <p>4 Q. As a company that you would expect</p> <p>5 to be concerned with safety, would you expect to</p> <p>6 see that if it had occurred?</p> <p>7 A. No. I mean, as far as I know, none</p> <p>8 of the experts, J&J's testing experts made any</p> <p>9 mention of it.</p> <p>10 MR. TISI: Okay. Let's take a</p> <p>11 break.</p> <p>12 THE COURT REPORTER: Off the</p> <p>13 record.</p> <p>14 (Recess: 4:30 p.m. -</p> <p>15 4:38 p.m.)</p> <p>16 MR. TISI: I cede my time to</p> <p>17 Mr. Golomb.</p> <p>18 MR. GOLOMB: I just have a few</p> <p>19 questions.</p> <p>20 EXAMINATION</p> <p>21 BY MR. GOLOMB:</p> <p>22 Q. I want to -- it may seem like I'm</p> <p>23 jumping around a little bit, but I want to be</p> <p>24 methodical and not duplicate questions so I won't</p>	<p style="text-align: right;">Page 433</p> <p>1 report, you use the word "cherry-picking."</p> <p>2 A. Uh-huh.</p> <p>3 Q. What did you mean by that?</p> <p>4 A. Just picking a particular document</p> <p>5 and just drawing on that one document, not putting</p> <p>6 it into context.</p> <p>7 Q. Okay. And did anybody do that in</p> <p>8 this case?</p> <p>9 A. I have seen that throughout reports.</p> <p>10 Q. Give me an example.</p> <p>11 A. In the Kessler report, I think there</p> <p>12 were some evidence of cherry-picking.</p> <p>13 Q. What evidence of cherry-picking was</p> <p>14 there in the report?</p> <p>15 A. No, I can't remember specifically</p> <p>16 right at the moment.</p> <p>17 Q. Okay. So you remember there was</p> <p>18 cherry-picking, but you can't give me a single</p> <p>19 example of it, as you sit here today?</p> <p>20 MR. EWALD: You want to show</p> <p>21 her a copy of the report?</p> <p>22 THE WITNESS: Yeah.</p> <p>23 MR. EWALD: She can point it</p> <p>24 out.</p>

<p style="text-align: right;">Page 434</p> <p>1 MR. GOLOMB: She -- she used</p> <p>2 the word --</p> <p>3 THE WITNESS: You know, I --</p> <p>4 MR. GOLOMB: She used the word</p> <p>5 "cherry-picking" without looking --</p> <p>6 THE WITNESS: And I meant that</p> <p>7 it's not --</p> <p>8 BY MR. GOLOMB:</p> <p>9 Q. Let me finish my question.</p> <p>10 A. Okay.</p> <p>11 Q. You used the word "cherry-picking"</p> <p>12 in your testimony earlier today in reference to</p> <p>13 Dr. Kessler.</p> <p>14 At that time, you didn't have the</p> <p>15 report in front of you and you didn't give any</p> <p>16 examples.</p> <p>17 And now I'm asking you if you can</p> <p>18 give us some examples of Dr. Kessler's</p> <p>19 cherry-picking.</p> <p>20 MR. EWALD: Without putting it</p> <p>21 in front of her first.</p> <p>22 BY MR. GOLOMB:</p> <p>23 Q. If the answer is -- if the answer is</p> <p>24 "I don't remember," just say so.</p>	<p style="text-align: right;">Page 436</p> <p>1 about it.</p> <p>2 Q. And if you were in front of a jury</p> <p>3 and asked to explain what that sentence means, how</p> <p>4 would you put it?</p> <p>5 A. The idea that we're looking at our</p> <p>6 experience and figuring out, you know, what we're</p> <p>7 thinking as a consequence of having experienced</p> <p>8 it.</p> <p>9 Q. Okay. And by "retrospective" you</p> <p>10 mean looking at past events, correct?</p> <p>11 A. Not necessarily. Just looking at</p> <p>12 the past moment, you know, and what I'm</p> <p>13 experiencing. I mean, you experience something</p> <p>14 and then you reflect on it.</p> <p>15 Q. What's the difference?</p> <p>16 A. But there are other ways to think</p> <p>17 about sensemaking. As I have defined in my</p> <p>18 document, drawing on other people's work and that</p> <p>19 relates more specifically to the idea of how</p> <p>20 information enters an organization, how it's</p> <p>21 interpreted, how it's acted upon, how it is</p> <p>22 affirmed or disaffirmed.</p> <p>23 Q. What is the difference between past</p> <p>24 events and past moments?</p>
<p style="text-align: right;">Page 435</p> <p>1 A. I have to say, I don't remember</p> <p>2 specifics.</p> <p>3 Q. Okay. Sensemaking. Would you --</p> <p>4 would you agree that sensemaking is the "ongoing</p> <p>5 retrospective development of plausible images that</p> <p>6 rationalize what people are doing"?</p> <p>7 A. There are many definitions of</p> <p>8 sensemaking that comes from my belief from my</p> <p>9 collaborators' work.</p> <p>10 Q. I'm sorry?</p> <p>11 A. I said that there are other ways to</p> <p>12 think about sensemaking.</p> <p>13 Q. Okay. But do you agree or disagree</p> <p>14 with the statement I just read to you?</p> <p>15 A. I believe that came from my</p> <p>16 collaborators' work.</p> <p>17 Q. Right.</p> <p>18 That was your work with Dr. Weick</p> <p>19 and Dr. Oberfeld in 2012?</p> <p>20 A. Obstfeld.</p> <p>21 Q. Okay. So obviously you agree with</p> <p>22 your own statement, right?</p> <p>23 A. Yeah, but, I mean, sensemaking is</p> <p>24 more than that. There are many ways to think</p>	<p style="text-align: right;">Page 437</p> <p>1 A. Just -- just I'm thinking about it</p> <p>2 in time. Sensemaking is kind of happening.</p> <p>3 Q. That wasn't my question.</p> <p>4 My question is: I asked you about</p> <p>5 past events and you said past moments.</p> <p>6 And I'm asking you: What's the</p> <p>7 difference between past events and past moments?</p> <p>8 A. Because sensemaking is ongoing and</p> <p>9 so it's occurring at, you know, as people are</p> <p>10 experiencing things or in the moment.</p> <p>11 Q. And hindsight bias allows people to</p> <p>12 convince themselves after an event that they</p> <p>13 accurately predicted it before it happened?</p> <p>14 A. Hindsight bias is the idea of</p> <p>15 knowing certain particular outcomes and looking</p> <p>16 back and making the assumption that things are</p> <p>17 more predictable than they would have been.</p> <p>18 Q. Okay. Do you agree or disagree with</p> <p>19 the statement I just made? And I'll repeat it.</p> <p>20 Hindsight bias allows people to</p> <p>21 convince themselves after an event that they</p> <p>22 accurately predicted it before it happened.</p> <p>23 Do you agree or disagree with that</p> <p>24 statement?</p>

<p style="text-align: right;">Page 438</p> <p>1 A. That can be the case, but there are 2 many ways to think about hindsight bias. 3 Q. And disruptive ambiguity is when 4 situations that happen which are not expected to 5 disrupt our plans or way of life. 6 A. Disruptive -- 7 Q. Do you agree or disagree with that 8 statement? 9 A. It can be defined in other ways as 10 well. It can be a surprise. It's an 11 inconsistency between what we expected and what 12 we're experiencing. 13 Q. Is the statement that I just said 14 the definition of disruptive ambiguity something 15 you agree with or disagree with? 16 They are situations that happen 17 which are not expected to disrupt our plans or way 18 of life. 19 A. I -- I would have to say I think 20 about it a little bit differently. 21 Q. Okay. And Credo is a statement of 22 the beliefs or aims which guide someone's actions. 23 A. It can be guide -- a guiding 24 statement.</p>	<p style="text-align: right;">Page 440</p> <p>1 A. No, I -- I am not aware of that. I 2 think you brought it up this morning. 3 Q. You weren't aware of that before 4 today? 5 A. I don't recall whether I was or I 6 wasn't. 7 Q. Okay. In your report, you say that 8 you were initially provided 600 documents, 9 correct? 10 A. In my report, I asked for initial 11 documents and I received 600, and I described 12 in -- early in my report what I asked for. 13 Q. Your name is Kathleen M. Sutcliffe, 14 PhD, correct? 15 A. Correct. 16 Q. Okay. See, you can answer a 17 question yes or no. 18 MR. EWALD: Oh, come on. 19 BY MR. GOLOMB: 20 Q. My question to you was -- 21 MR. EWALD: Is that a question 22 before? Did she answer it? 23 MR. GOLOMB: She did. She 24 said "correct."</p>
<p style="text-align: right;">Page 439</p> <p>1 Q. Did you know what IARC was before 2 this case? 3 A. I might have heard about IARC 4 before. 5 Q. How might you have heard about it 6 before? 7 A. I read the epidemiology literature 8 at times. I have used it in my own work and I 9 have, you know, I mean, I'm aware of particular 10 institutions around the world. 11 Q. And you know that in -- and I'm not 12 going to go into the details of what Mr. Tisi 13 already did with you, but you know that in 2012 14 talc without asbestos was determined to be a 2B 15 possible carcinogen by IARC, correct? 16 A. Again, I would have to look at the 17 -- at what I know is that in 2010 IARC published a 18 monograph that evaluated the carcinogenic hazards 19 of talc not containing asbestos fibers and listed 20 perineal use of talc-based baby powder in group 2B 21 possibly a carcinogenic. 22 Q. Okay. And you know that following 23 that that talc with asbestos was ruled a 24 carcinogen, correct?</p>	<p style="text-align: right;">Page 441</p> <p>1 THE WITNESS: And I said 2 "correct" many times this morning. 3 BY MR. GOLOMB: 4 Q. Okay. Are you aware one way or the 5 other as to whether or not IARC is looking at the 6 association between talc and ovarian cancer any 7 further? 8 A. I -- I am not aware. I mean, I 9 don't know what IARC is looking at, at the moment. 10 Q. Okay. 11 A. I'm not studying that. 12 Q. And if IARC was looking at this 13 further and concluded that, in fact, talc without 14 asbestos like talc with asbestos was a carcinogen, 15 would that in any way change your organizational 16 behavioralist assessment? 17 A. You know, I can't answer that just 18 in the abstract. I would have to investigate 19 things and think about it, and I can't answer it 20 right at the moment. 21 Q. And so does that mean that maybe it 22 would? 23 A. It means that I can't really say 24 whether I would or whether I wouldn't.</p>

<p style="text-align: right;">Page 442</p> <p>1 Q. Okay. Now, let me go back to the 2 600 documents and see if I can get an answer to 3 the question. 4 I believe the question was: When 5 you were initially retained, you were provided 6 with 600 documents; is that correct? 7 A. When I was initially retained, I 8 asked for documents and I can tell you what those 9 were. 10 As I stated in my report here is 11 that I wanted an exhaustive search of the 12 production records for documents that would be 13 relevant, such as materials related to the 14 industry, regulatory, scientific, and media 15 perspectives on whether cosmetic talc contained 16 asbestos, and how these perspective change -- 17 perspectives changed over time. Materials that 18 informed general understanding of J&J's 19 orientation toward health and safety, in the 20 ordinary course of business, documents regarding 21 health and safety of J&J baby powder materials 22 that informed an understanding of how J&J was 23 organized to respond to potential health safety 24 issues related to its baby powder talc products,</p>	<p style="text-align: right;">Page 444</p> <p>1 A. It is an iterative process. My 2 process is iterative. 3 Q. Just try to answer my question. 4 The initial set of documents that 5 you got was a set of 600 documents; is that 6 correct? 7 A. I said it was a set of 600 8 documents -- 9 Q. Okay. 10 A. -- that I asked for related to the 11 issues that I've already read. 12 Q. Okay. And that set of 600 documents 13 were documents that were sent to you by the 14 lawyers for J&J? 15 A. The documents were sent to Analysis 16 Group by the lawyers. 17 Q. Okay. By the way, you were asked 18 earlier as to whether or not you had an ownership 19 interest in the Analysis Group, and your answer 20 was no, correct? 21 A. No, as far as I know, I don't have 22 an ownership interest. 23 Q. If you have an ownership interest in 24 Analysis Group, don't you think you would know</p>
<p style="text-align: right;">Page 443</p> <p>1 its capabilities to do so, associated 2 expenditures. 3 Q. Are you through? 4 A. Yeah. 5 Q. Okay. Move to strike the answer. 6 I'm going to try the question again. 7 When you were initially retained, 8 you received a set of 600 documents for your 9 initial review, correct? 10 A. When I was initially retained, I 11 asked for an exhaustive set of documents that 12 could get me up to speed on what the issues were. 13 Q. Okay. What you were provided 14 initially was a set of documents, which was -- 15 which included 600 documents? 16 A. The 600 documents were the first 17 things that I reviewed and then -- 18 Q. That's my question. 19 A. Okay. And then I, you know, asked 20 for everything that was produced. 21 Q. I didn't ask you that. 22 A. Okay. But I'm letting you know. 23 Q. Move to strike everything after 24 "Yes."</p>	<p style="text-align: right;">Page 445</p> <p>1 that? 2 A. I think I would know that. 3 Q. Okay. Did you -- we know that you 4 received somewhere in the area of 4 to \$500,000 as 5 Kathleen Sutcliffe. 6 Did -- were -- did you have the 7 invoices -- because we haven't received your 8 invoices. 9 Did the invoices that you provided 10 to counsel for J&J in order for you to get paid 11 that 4 to \$500,000, did that come on Kathleen 12 Sutcliffe letterhead? 13 A. Yes. 14 MR. EWALD: Objection to form. 15 BY MR. GOLOMB: 16 Q. All right. And were those invoices 17 similar to -- similar to what we have here 18 (indicates) from Analysis Group? 19 And by that I mean, what we have 20 from Analysis Group is a three-page document. The 21 first is a bullet point description of what you 22 did or what the Analysis Group did. 23 A. My team. 24 Q. Yeah.</p>

<p style="text-align: right;">Page 446</p> <p>1 A. Yes.</p> <p>2 Q. There is a second page is a summary</p> <p>3 by name of how many hours somebody worked on it</p> <p>4 and what their hourly rate was.</p> <p>5 A. Uh-huh.</p> <p>6 Q. And then the third page is wiring</p> <p>7 instructions.</p> <p>8 The bills that you provided, were</p> <p>9 they similar?</p> <p>10 A. Probably not as specific but</p> <p>11 similar.</p> <p>12 Q. Less specific than that?</p> <p>13 A. I just write whether I reviewed</p> <p>14 documents, what I was working on, whether I was</p> <p>15 having meetings, what I was doing.</p> <p>16 Q. So you don't have any timesheets for</p> <p>17 the work that you did?</p> <p>18 A. Those are the timesheets for the</p> <p>19 work that I did.</p> <p>20 Q. Well, that's -- it's a summary that</p> <p>21 says I worked --</p> <p>22 A. I put -- I put the dates on it.</p> <p>23 Q. Excuse me. Let me finish my</p> <p>24 question.</p>	<p style="text-align: right;">Page 448</p> <p>1 A. It is not as specific, but it put --</p> <p>2 it has -- as I said a couple minutes ago, I have</p> <p>3 the number of hours I spent, the date that I was</p> <p>4 working on it, and what I was doing.</p> <p>5 Q. And so that -- so that the work that</p> <p>6 -- the work that you did, if we wanted to know</p> <p>7 specifically what you were doing or, in fact, if</p> <p>8 J&J wanted to know specifically what you were</p> <p>9 doing day in and day out --</p> <p>10 A. Uh-huh.</p> <p>11 Q. -- you don't have, for example,</p> <p>12 timesheets that would indicate how many hours you</p> <p>13 spent reviewing certain documents?</p> <p>14 A. I don't have the specific documents</p> <p>15 I reviewed by time, correct.</p> <p>16 Q. And so are you -- would you be able</p> <p>17 to determine what the 600 documents that J&J</p> <p>18 initially provided to you what they were?</p> <p>19 A. I reviewed all the 600 documents</p> <p>20 that I -- that were received.</p> <p>21 Q. My question is a little bit</p> <p>22 different, and that is: If we wanted to know</p> <p>23 specifically what you reviewed in those 600</p> <p>24 documents, how would we know that if they</p>
<p style="text-align: right;">Page 447</p> <p>1 That's a summary that said, I worked</p> <p>2 X number of hours at Y number -- Y hourly rate --</p> <p>3 A. Uh-huh.</p> <p>4 Q. -- equalling the total.</p> <p>5 Is that something that you did?</p> <p>6 A. That I -- I submitted my invoices</p> <p>7 the way I submitted them, which was the date that</p> <p>8 I did work, what I was doing, and how many hours I</p> <p>9 spent.</p> <p>10 Q. Okay. But anybody looking at this</p> <p>11 document would have no -- no way of knowing of</p> <p>12 what it is you did specifically day in and day out</p> <p>13 in relationship to your work as an expert in this</p> <p>14 case; is that right?</p> <p>15 A. Because this isn't -- this isn't my</p> <p>16 document.</p> <p>17 Q. Well, do you have that summary?</p> <p>18 A. This is -- this is for my team.</p> <p>19 Q. But do you have a similar document?</p> <p>20 A. I submit the document similar to</p> <p>21 this.</p> <p>22 Q. Okay. My question is: In the -- in</p> <p>23 the 4 to \$500,000 that you invoiced J&J, is your</p> <p>24 invoice similar to this one?</p>	<p style="text-align: right;">Page 449</p> <p>1 weren't -- if they're not on your timesheets?</p> <p>2 A. I -- because I have reviewed all the</p> <p>3 documents.</p> <p>4 Q. Well, you're asking us to take you</p> <p>5 at your word.</p> <p>6 A. Uh-huh.</p> <p>7 Q. You're not -- you don't have any</p> <p>8 evidence to prove to us what it is of the 600</p> <p>9 documents that you actually reviewed or for us to</p> <p>10 determine what those 600 documents are?</p> <p>11 A. All I can say is I have reviewed all</p> <p>12 the documents.</p> <p>13 Q. Okay.</p> <p>14 MR. EWALD: And on that one,</p> <p>15 I'd be happy to work with you guys. I</p> <p>16 can't say with certainty that we're able</p> <p>17 to do that, but I can certainly look to</p> <p>18 see if we can. I'm pretty sure we can,</p> <p>19 if we can, be happy to provide that.</p> <p>20 MR. GOLOMB: Okay. I</p> <p>21 appreciate that.</p> <p>22 BY MR. GOLOMB:</p> <p>23 Q. And just to -- just to finalize this</p> <p>24 issue, in other words, the 600 -- the initial 600</p>

<p style="text-align: right;">Page 450</p> <p>1 documents that you reviewed, they're not all on 2 your reliance or things considered list? 3 A. No, they aren't. 4 Q. Okay. 5 A. Because I -- well, they were on -- a 6 lot of them are on there but not all -- not all of 7 the original 600, correct. 8 Q. Okay. And then -- 9 A. Because I didn't use them all. 10 Q. And then in some form or fashion, 11 you asked for -- you asked for additional 12 documents and you were provided access to a 13 database, which you've described as about 500,000 14 documents? 15 A. About. Yeah, I think it was 480 or 16 whatever, and then I received additional documents 17 or we received the database of an additional 18 80,000 -- 80,000 or so from the LAOSD. 19 Q. All right. And we would have no way 20 of knowing either from your report or from your 21 billing records what -- what any portion of those 22 50,000 documents -- 500,000 documents are that you 23 reviewed? 24 A. Not that I would know of. I mean,</p>	<p style="text-align: right;">Page 452</p> <p>1 A. I think that I document the meetings 2 that I've had. 3 Q. How did you document the meetings 4 you've had? 5 A. On my -- on my timesheets that I -- 6 my invoices. 7 Q. Your -- your invoices? 8 A. That is not my -- 9 Q. I know -- 10 A. Yeah. 11 Q. -- but you told us earlier that the 12 information that's on these two pages -- 13 A. Uh-huh. 14 Q. Because the third page is nothing 15 more than your wiring instructions, right? 16 A. Right. 17 Q. Okay. But you've told us -- 18 A. I mean -- well, I didn't -- I didn't 19 do those. 20 Q. Yeah, but you've told us that the 21 information on these pages that we received from 22 the Analysis Group -- 23 A. Uh-huh. 24 Q. -- are actually more detailed than</p>
<p style="text-align: right;">Page 451</p> <p>1 they're posted. I've talked -- I talk about them 2 with the team. I reviewed them. The original 3 documents were in binders, I think. 4 Q. And in fact -- and in fact, the 5 500,000 -- if J&J looked at your bills and said 6 \$500,000 -- \$500,000, what did you do for 7 \$500,000, how much time did you spend reviewing 8 these 600 documents, how much time did you spend 9 reviewing any of the 500,000 documents, they would 10 have no way of knowing, would they? 11 A. I, you know, all I can say is that I 12 noted on my timesheets what I was doing. 13 The other thing is to remember that 14 my method is, as I said earlier, resource- and 15 time-intensive. I work with a team. I direct a 16 team. I supervise the team. The team, I have two 17 people looking at each document before it gets 18 binned, and then we're having frequent 19 discussions. 20 Q. But we would have no way -- there is 21 no evidence in your report or in your -- in your 22 billing invoices to in any way, shape, or form 23 tell us when those meetings took place, who was in 24 those meetings, anything like that, correct?</p>	<p style="text-align: right;">Page 453</p> <p>1 your records? 2 A. They're a little bit more detailed, 3 correct. 4 Q. Okay. And there's no way for us to 5 tell from this, from the Analysis Group records -- 6 A. Uh-huh. 7 Q. -- when you met with somebody from 8 the Analysis Group, how much time you spent, what 9 records you reviewed, any of that from these two 10 pages. 11 Wouldn't you agree with that? 12 A. It says what it says. 13 Q. Okay. Well, you tell me. 14 (Hands document). 15 Where is the detail of any meeting 16 that you had with Susan Nicholson, for example? 17 A. You have my notes from my meeting. 18 Q. We have your notes, but we don't 19 know what you did to prepare for that, what you 20 did after that. 21 A. Uh-huh. 22 Q. We don't know how much time you 23 spent with her. We don't know any of that. 24 A. Yeah.</p>

<p style="text-align: right;">Page 454</p> <p>1 Q. Okay. And you met with John 2 Hopkins? 3 A. Correct. 4 Q. Okay. We don't know what you did to 5 prepare for that meeting. We don't know who you 6 spoke with before that meeting. We don't know how 7 long that meeting took place. We don't know what 8 you did after that meeting. We don't have any of 9 that information. 10 A. That could be on one of my invoices. 11 I don't remember. That was a while ago. 12 Q. Okay. Why -- why weren't your 13 invoices turned over? 14 A. I -- I don't know. I mean, this is 15 what was turned over. 16 Q. Did you turn over your invoices to 17 the lawyers? 18 A. I submitted my invoices to AG. 19 Q. To who? 20 A. Analysis Group. 21 Q. Okay. So your invoices went to 22 Analysis Group. 23 So if we subpoenaed Analysis Group, 24 do you think your invoices would be in those</p>	<p style="text-align: right;">Page 456</p> <p>1 go to you or did you have to share that with 2 anybody whether it was Analysis Group or anybody 3 else? 4 A. No, that comes to me. I'm directing 5 a team at Analysis Group. 6 Q. Okay. But -- and any of the 285,000 7 or so which was billed for Analysis Group and the 8 nine people that are itemized on that summary on 9 that two-page invoice, did you receive any share 10 of that? 11 A. No, that's what they billed. 12 Q. Okay. So you didn't receive a 13 percentage of the Analysis Group? 14 A. No, I'm not saying that. I mean. 15 Q. Well, that's what I'm asking. 16 A. Okay. That's -- that's the bill 17 that they billed for the time that they -- that 18 the team has been spending doing the work that 19 I've asked them to do. 20 Q. My question is: Aside from the 4 to 21 \$500,000 or more that you received as a result of 22 you invoicing on Kathleen Sutcliffe letterhead, 23 did you receive any -- any share of the \$285,000 24 that was billed under the Analysis Group</p>
<p style="text-align: right;">Page 455</p> <p>1 records? 2 A. I can't say that they would or 3 wouldn't. 4 (Recess taken due to technical 5 difficulties - 5:01 p.m. - 5:03 p.m.) 6 BY MR. GOLOMB: 7 Q. All right. We had a little 8 technical issues. So I just want to clarify a 9 couple things. 10 So you provided your bills on 11 Kathleen M. Sutcliffe letterhead, and those bills 12 were somewhere between 400 and \$500,000, correct? 13 A. Yes, over a five-year period. 14 Q. And those bills were then submitted 15 to Analysis Group? 16 A. Correct. 17 Q. So you didn't submit anything 18 directly to J&J? 19 A. No. 20 Q. It went to Analysis Group? 21 A. Yes. 22 Q. All right. And when you got paid, 23 whatever the number is, 4 or \$500,000 based on 24 what you billed on your letterhead, did that all</p>	<p style="text-align: right;">Page 457</p> <p>1 letterhead? 2 A. I -- I mean, I don't know that I can 3 answer that question. I'm not receiving. The 4 Analysis Group, that's for the work that they 5 completed. 6 Q. Okay. Well, when you -- when you 7 received the check for the 4 or \$500,000 for the 8 work that you did, who did the check come from? 9 A. Analysis Group put -- I mean, J&J. 10 J&J is paying -- paying me through Analysis Group. 11 Analysis Group puts the money into my account. 12 Q. Okay. So just so I'm clear, so 13 there is -- there was somewhere in the area of 7 14 to \$800,000 that was billed as between you and 15 Analysis Group. 16 And then those bills were then 17 submitted to J&J, J&J then wrote a single check 18 back to Analysis Group, and Analysis Group wrote 19 you a check for your portion of it? 20 MR. EWALD: Objection to form. 21 Vague and ambiguous. Compound. 22 Go ahead. 23 THE WITNESS: You know, I 24 mean, I don't know what happens with</p>

<p style="text-align: right;">Page 458</p> <p>1 between J&J and Analysis Group. 2 MR. GOLOMB: That's like the 3 most specific question I've asked. 4 MR. EWALD: Pretty long but. 5 THE WITNESS: All I know is I 6 submit my bills to Analysis Group. 7 Analysis Group submits it to either the 8 lawyers or the -- or J&J. They get paid. 9 They pay me. 10 BY MR. GOLOMB: 11 Q. Okay. Well, when you say "they pay 12 me," Analysis Group pays you? 13 A. Analysis Group pays me. 14 Q. Okay. So why aren't you just on the 15 one of the nine or ten people on the Analysis 16 Group? 17 A. Because this is my team at Analysis 18 Group. I submit -- I'm the -- I'm an independent 19 person. 20 Q. Okay. 21 A. I don't work for Analysis Group. 22 Q. Have you ever testified in a 23 courtroom before? 24 A. No.</p>	<p style="text-align: right;">Page 460</p> <p>1 Credo if they don't follow it? 2 A. I think it's a -- it's a statement, 3 you know, suggesting what we -- what we should 4 live up to. 5 Q. And so if you -- if you -- 6 hypothetically, if your Credo -- well, let me 7 strike that. 8 What is the Credo of J&J, as you 9 understand, based on your review of the documents 10 as a behavioral -- organizational behavioralist? 11 A. I'm not sure I get your question. 12 Q. You got -- you were hired by J&J, 13 correct? 14 A. Correct. 15 Q. All right. And you reviewed many, 16 many documents. The 600 documents plus some 17 portion of 500,000 documents? 18 A. I -- yes, I reviewed thousands of 19 pages of documents. 20 Q. Okay. And based on your -- based on 21 your review of those documents, based on your 22 conversation with John Hopkins, based on your 23 conversation with Susan Nicholson, you learned 24 through that -- through that review and through</p>
<p style="text-align: right;">Page 459</p> <p>1 Q. So you've never testified in a 2 trial? 3 A. No. 4 Q. You've never testified at a Daubert 5 hearing? 6 A. No. 7 Q. Do you know what a Daubert hearing 8 is? 9 A. Yes. 10 Q. Again, I don't want to -- I don't 11 want to repeat areas. So just bear with me. 12 You testified earlier that Credo is 13 a "value statement"; is that right? 14 A. I did say that. 15 Q. Okay. Is there any value in a Credo 16 if the company fails to implement what their Credo 17 says? 18 A. I think that, you know, it's 19 important to -- to have congruence between what we 20 say and what we do, but I think -- I think credos 21 have value have -- value regardless. 22 Q. Okay. And so what is -- tell me 23 what the value of a Credo is if the company 24 doesn't follow the Credo? What is the value of a</p>	<p style="text-align: right;">Page 461</p> <p>1 those discussions what J&J's Credo is, correct? 2 A. J&J's Credo is written down. 3 Q. Okay. What's J&J's Credo? 4 A. Right. First of all, it's been 5 revised over time as -- as credos or belief 6 statements or value statements happen. 7 Q. What was J&J's Credo when you were 8 first retained in 2019? 9 A. I -- I do not remember. 10 Q. Okay. 11 A. But anyway, as I said here, you 12 know, the 1943 version, I have it written in my 13 report, and I know that it has been updated over 14 time and that's pretty normal for organizations. 15 Q. And what was the Credo in 1943? 16 A. 1943. It just started out that "We 17 believe that our first responsibility is to our 18 customers." 19 Q. All right. And how has it changed 20 over time since 1943? 21 A. You know, I did not study 22 specifically how it's changed. I know that it has 23 been reexamined over time several times. As it 24 should be.</p>

<p style="text-align: right;">Page 462</p> <p>1 Q. But regardless of what the words in 2 the Credo are from as they changed over the years, 3 would you agree with me that the emphasis was on 4 customer safety? 5 A. The emphasis is -- is on, you know, 6 that there was -- we have a responsibility to the 7 people that we're serving. 8 Q. Okay. And that's their customers 9 correct? 10 A. It's changed over time. 11 Q. And so are you saying that the J&J 12 Credo that was -- they went it was customers -- 13 customers come first in 1943 that that somehow has 14 changed since 1943? 15 A. My understanding is if you look -- I 16 mean, number one, I have not -- I have not done a 17 redline on the Credo. 18 Q. Okay. 19 A. I included the Credo just as -- as 20 an example to help think about or include it just 21 because I wanted to understand the organizational 22 ethos in some way. 23 Q. Okay. 24 A. But I have not gone through a</p>	<p style="text-align: right;">Page 464</p> <p>1 final responsibility was to the stockholders? 2 A. No, I don't -- I mean, I can't 3 really answer that off the top of my head. It 4 seems like it's weird. I don't know whether that 5 would happen but, you know, I think about a Credo 6 as a value statement. 7 Q. Okay. Would it ever be -- would it 8 ever be acceptable for you, as an organizational 9 behavioralist, for a company like J&J, \$380 10 billion public company, \$90 billion a year in 11 revenue, would it ever be acceptable to them -- 12 acceptable to you, as an organizational 13 behavioralist, for the company to have a Credo in 14 which their final responsibility was to the 15 stockholders where they were putting profits over 16 people? Would that ever be acceptable? 17 MR. EWALD: Objection to form. 18 Mischaracterizes. 19 THE WITNESS: You know, I 20 mean -- I mean, if you're trying to -- I 21 don't really know what you're trying to 22 say. 23 You're trying to say that J&J 24 was putting profits over people? I will</p>
<p style="text-align: right;">Page 463</p> <p>1 redline and looked at how specifically it has 2 changed over time. I know that it's been changed. 3 Q. Okay. And how has it been changed? 4 A. I mean, I'm just looking on my page 5 E-1 and E-2, and as I said in my document, J&J's 6 Credo today, the first line is a little different 7 than it was in 1943. 8 Q. Okay. By "today" you mean as we sit 9 here today in 2024? 10 A. No, I -- this when I wrote, whenever 11 I put this together, that was probably in 2021. 12 Q. Okay. 13 A. So as of 2021. I don't know whether 14 it's -- I don't recall whether it's changed 15 between 2021 and now. 16 Q. What was the Credo that you 17 documented as of 2021? 18 A. "We believe our first responsibility 19 is to the patients, doctors and nurses, to mothers 20 and fathers and all others who use our products 21 and services." 22 Q. Okay. And as an organizational 23 behavioralist, would it ever be acceptable for a 24 company like J&J to have a Credo in which their</p>	<p style="text-align: right;">Page 465</p> <p>1 just say that the hundreds of thousands 2 of document pages that I have reviewed 3 does not -- is not -- it's not consistent 4 with what you're saying. 5 BY MR. GOLOMB: 6 Q. I'm just asking a question. 7 Would it ever be acceptable for a 8 company -- for a company's Credo to be that their 9 final responsibility is to the stockholders, in 10 other words, putting profits over people? 11 A. No, I mean -- 12 MR. EWALD: Objection. 13 Go ahead. 14 THE WITNESS: -- I think 15 that's a -- that's a hypothetical 16 question and I don't think that I can 17 really answer that just -- just on the 18 face of it. Because for some companies 19 maybe stakeholders or shareholders are 20 the key persons to benefit from an 21 organization. 22 BY MR. GOLOMB: 23 Q. Well, you and your colleagues were 24 paid \$700,000 as an expert in this case and</p>

<p style="text-align: right;">Page 466</p> <p>1 experts answer hypothetical questions all the 2 time. 3 A. Again -- 4 Q. That's part of what they do, that's 5 part of what they get paid for, and that's part of 6 why you're allowed to go into a courtroom and 7 testify in front of a jury. 8 MR. EWALD: Is there a 9 question? 10 BY MR. GOLOMB: 11 Q. So are you saying -- 12 MR. GOLOMB: Yes. 13 MR. EWALD: Okay. 14 BY MR. GOLOMB: 15 Q. Are you saying that you're unable to 16 answer the question, as an organizational 17 behavioralist, as to whether or not it would be 18 acceptable to put profits over people? 19 A. Again, as I said, it may be. In 20 some context, maybe but, you know, in this case, 21 it's -- that's not what I saw. 22 Q. Okay. Tell me the context in which 23 it would be -- it would be acceptable to you, as 24 an organizational behavioralist, for a company to</p>	<p style="text-align: right;">Page 468</p> <p>1 acceleration, that they did not reach out to 2 experts to understand what they were facing. That 3 they totally had a belief system that the 4 engineers knew -- knew what was right, and 5 that's -- that's about it. 6 Q. They had -- you just said they had 7 -- they didn't have an understanding of the 8 failures? 9 A. No. What I said was they had 10 sensemaking failures. That they weren't reaching 11 out to experts, that they were very insulated, 12 that engineers believed that they knew best. 13 Q. Okay. 14 A. That they weren't digging into their 15 failures. 16 Q. But in this case, there were no 17 sensemaking failures? 18 A. In this case, I'm saying that I saw 19 different processes going on. 20 Q. Okay. But -- so, but my question 21 was: Your opinion is in this case is that there 22 were no sensemaking failures? 23 A. I was not looking at sensemaking 24 failures in this case. I was looking at the</p>
<p style="text-align: right;">Page 467</p> <p>1 put profits over people. 2 A. You know, I can't sit here and say 3 this. I would have to really think about these -- 4 these questions and this issue. 5 Q. Okay. You talked about BP. 6 You were an expert in BP, right? 7 A. I was retained by BP, correct. 8 Q. Okay. What was your ultimate 9 opinion in BP? 10 A. Again, I -- I -- it's been, you 11 know, years since I looked at my report for BP. 12 We discussed it this morning, and I think I said 13 that one of the things I did was to study BP's 14 safety culture in the time leading up to Deepwater 15 Horizon. 16 Q. And you also mentioned Toyota. 17 Were you an expert in Toyota? 18 A. I was an expert for plaintiffs in 19 Toyota. 20 Q. Okay. And what was your -- what was 21 your ultimate opinion in Toyota? 22 A. I -- that Toyota, unlike J&J, had 23 numerous sensemaking failures. That they did not 24 seek -- when they started having unintended</p>	<p style="text-align: right;">Page 469</p> <p>1 sensemaking process. 2 Q. Okay. Well, were there sensemaking 3 failures in this case? 4 A. In this case, I was looking at the 5 institutionalized knowledge that J&J created over 6 time and the processes that they engaged in. 7 Q. Okay. But sitting here today, 8 having reviewed the initial 600 documents, having 9 reviewed some portion of 50,000 documents, having 10 looked at -- although you're not -- not an 11 epidemiologist. 12 I would assume -- correct me if I'm 13 wrong -- some of those 500,000 pages of documents 14 included epidemiology studies; is that correct? 15 A. I read some studies that I've -- 16 that I've discussed today. 17 Q. Okay. And so you weren't asked to 18 address by J&J whether or not there were 19 sensemaking failures in this case, correct? 20 A. In this case, what I was asked to do 21 is to understand what J&J knew and when, and how 22 they were, and whether or not the actions that 23 they were pursuing to make sense of what the 24 safety -- the safety of their -- the safety of</p>

<p style="text-align: right;">Page 470</p> <p>1 talc, whether the practices they were engaging in 2 were consistent with the best practices in 3 sensemaking. And I found that they were. 4 Q. Okay. Move to strike that. That 5 wasn't my question. 6 My question was: Isn't it correct 7 that in this case, part of what you were asked to 8 do did not include whether or not there were 9 sensemaking failures on the part of J&J? 10 A. The way that I see it is it's all -- 11 it's all connected. 12 I mean, when I say the term 13 "sensemaking failure," what I'm meaning is that 14 the organization was not engaging in the kinds of 15 practices that I would have expected to see in a 16 company that was doing a good job in making sense. 17 Q. Okay. But five minutes ago you 18 talked about the sensemaking failures in Toyota, 19 and you were very clear to say that that's not 20 something you assessed in this case; is that 21 correct? 22 A. If I said that, I made -- I might 23 have misspoken. But I was looking at the 24 practices, the sensemaking practices that J&J was</p>	<p style="text-align: right;">Page 472</p> <p>1 Johnson & Johnson document dating back to 1996. 2 Both of which where they make -- where 3 recommendations were made for J&J to do their own 4 study for about half as much money as they paid 5 you to defend them in this case. 6 And you don't think that's a 7 sensemaking failure either; is that correct? 8 MR. EWALD: Objection to form. 9 Mischaracterizes testimony. 10 Argumentative. 11 Go ahead. 12 THE WITNESS: I -- I'm not 13 connecting that with sensemaking. Thank 14 you. 15 BY MR. GOLOMB: 16 Q. Okay. You're not. 17 The fact that there were two 18 recommendations made to J&J to do these studies 19 and their failure to do -- to do those studies or 20 their refusal to do those studies, that there's no 21 connection on the sensemaking failure on that? 22 A. Again, I have not studied what 23 J&J -- what kinds of studies they pursued or they 24 didn't pursue.</p>
<p style="text-align: right;">Page 471</p> <p>1 engaging in, in order to come up with a fair 2 institutionalized knowledge of the safety of their 3 talc products. 4 Q. Okay. And so in this case, your 5 opinion is, is that despite over three dozen 6 studies dating back to 1971 that showed a 7 statistically significant association between 8 genital talc use and ovarian cancer, that in this 9 case there were no sensemaking failures on the 10 part of J&J. 11 Is that your testimony? 12 A. Again, I did not do a systematic 13 analysis of the research on ovarian cancer. 14 Q. Okay. 15 A. What I was looking at was the extent 16 to which J&J actively pursued scientific knowledge 17 related to its talc products and the safety of its 18 talc products, and whether or not the kinds of 19 activities, actions they took were consistent with 20 what I would expect to see in a company that cared 21 about consumers and the well-being of consumers. 22 Q. And you've seen not one but two 23 documents, one from a toxicologist, Dr. Wehner, 24 W-e-h-n-e-r, dating back to 1976, and you saw a</p>	<p style="text-align: right;">Page 473</p> <p>1 I investigated thousands of pages of 2 documents over decades, understanding J&J's 3 pattern of actions over time related to its 4 pursuit of scientific knowledge related to the 5 safety of its talc products, and whether or not 6 the actions in which they engaged in were 7 consistent with a company that cares about the 8 well-being of its -- of its consumers. 9 Q. Okay. And so is it your view 10 that -- that J&J, who didn't take the -- they 11 didn't take the advice of at least two experts 12 that we know of to do their -- to do a study to 13 make a determination on their own as to whether or 14 not there's an association between talc and 15 ovarian cancer, that that is a company that cares 16 about the safety of their products and their 17 customers? 18 MR. EWALD: Objection. 19 Argumentative. Mischaracterizes 20 testimony. 21 Go ahead. 22 THE WITNESS: What I looked 23 at is like 60 -- 60 years of evidence 24 over time about the company's actions and</p>

<p style="text-align: right;">Page 474</p> <p>1 their pattern of actions.</p> <p>2 And what I discerned is that</p> <p>3 the types of activities that J&J was</p> <p>4 engaging in -- interacting with experts,</p> <p>5 interacting with the scientific</p> <p>6 community, interacting openly and</p> <p>7 collaboratively with -- with other</p> <p>8 scientists, with the FDA, with</p> <p>9 regulators, establishing -- taking</p> <p>10 actions related to setting up multiple</p> <p>11 levels of testing, interacting with</p> <p>12 scientists at various, you know,</p> <p>13 conferences, paying and assuring that</p> <p>14 they're interacting with people and</p> <p>15 discussing research -- those are the</p> <p>16 kinds of activities that were -- were</p> <p>17 important to me.</p> <p>18 BY MR. GOLOMB:</p> <p>19 Q. Okay. And the -- well, the fact</p> <p>20 that they were active on the research and active</p> <p>21 in following up on the research, you don't know</p> <p>22 whether or not their activity was because they</p> <p>23 were trying to understand the science and deal</p> <p>24 with the science, or they were trying to influence</p>	<p style="text-align: right;">Page 476</p> <p>1 J&J was attending conferences where they were</p> <p>2 discussing things with scientists. They were</p> <p>3 engaging experts from around the world to pay --</p> <p>4 to assess the talc and to help them understand</p> <p>5 testing and other things like that. I saw that</p> <p>6 they were very active.</p> <p>7 Q. Can you identify a single one of the</p> <p>8 experts that you just talked about, a single one</p> <p>9 of the experts that went to a conference for J&J</p> <p>10 to talk about the association between talc and</p> <p>11 ovarian cancer that wrote on the subject before</p> <p>12 they were hired by J&J?</p> <p>13 A. That wasn't something that I studied</p> <p>14 and -- and I'm not looking at one single event, as</p> <p>15 I described earlier.</p> <p>16 Q. Okay. Would it make a difference to</p> <p>17 you whether or not an expert that -- that wrote on</p> <p>18 behalf of J&J had never written on the subject</p> <p>19 before getting hired?</p> <p>20 A. You know, I can't sit here and say</p> <p>21 that. It's just not something that I looked at.</p> <p>22 Q. Okay. And would it make a</p> <p>23 difference to you as to whether or not there were</p> <p>24 multiple plaintiffs' experts who had been writing</p>
<p style="text-align: right;">Page 475</p> <p>1 the science.</p> <p>2 You don't know that based on -- on</p> <p>3 what records you reviewed, right?</p> <p>4 MR. EWALD: Objection to form.</p> <p>5 THE WITNESS: You know, I am</p> <p>6 not sure what you're asking but, I mean,</p> <p>7 I know that J&J was attending to the</p> <p>8 science, attending conferences and paying</p> <p>9 and interacting with scientists over 60</p> <p>10 years.</p> <p>11 BY MR. GOLOMB:</p> <p>12 Q. Okay. But you don't know whether or</p> <p>13 not -- you don't know the reason why they were</p> <p>14 attending conferences is my point.</p> <p>15 A. Again, I know that what they were</p> <p>16 doing.</p> <p>17 Q. Okay. Would it change your opinion</p> <p>18 if you -- if you knew that they were attending</p> <p>19 conferences because they were trying to influence</p> <p>20 the outcome in those conferences on the conclusion</p> <p>21 of the talc ovarian cancer issue?</p> <p>22 A. Again, I mean, you know, I can't</p> <p>23 discern all the things from every single document.</p> <p>24 I know what I saw, and I saw that</p>	<p style="text-align: right;">Page 477</p> <p>1 on the subject for decades before they're ever</p> <p>2 retained by the plaintiffs in this case?</p> <p>3 Are those facts that matter to you?</p> <p>4 A. Those -- what I -- what mattered to</p> <p>5 me was the primary evidence looking at what J&J</p> <p>6 was doing over time.</p> <p>7 Q. Okay. Let's talk about one of the</p> <p>8 things that you said this morning.</p> <p>9 Now, you said over and over and over</p> <p>10 again -- correct me if I'm wrong -- but you said</p> <p>11 over and over and over again when Mr. Tisi was</p> <p>12 asking you questions about testing that you're not</p> <p>13 a testing expert, correct?</p> <p>14 A. I am not opining on the testing.</p> <p>15 Q. Yet you said at 11:25 this</p> <p>16 morning -- I wrote it down -- that in regards to</p> <p>17 testing that J&J went beyond industry standards.</p> <p>18 So if you're not a testing expert,</p> <p>19 how are you able to come up with that opinion?</p> <p>20 A. I am not opining on the details of</p> <p>21 the tests.</p> <p>22 Q. Okay. Then why would you say --</p> <p>23 A. I am --</p> <p>24 MR. EWALD: Let her finish her</p>

<p style="text-align: right;">Page 478</p> <p>1 answer.</p> <p>2 MR. GOLOMB: I'm sorry. I</p> <p>3 thought she was finished.</p> <p>4 THE WITNESS: No, I wasn't.</p> <p>5 BY MR. GOLOMB:</p> <p>6 Q. Go ahead.</p> <p>7 A. I'm not opining on the details of</p> <p>8 particular tests. What I know is that I know</p> <p>9 about the -- I mean, I know from my research. I</p> <p>10 looked at the round-robin. I know why -- what was</p> <p>11 happening in the 1970s.</p> <p>12 I know that once J4-1 was</p> <p>13 established that -- that there were -- that it</p> <p>14 wasn't going to cover everything and that, you</p> <p>15 know, TEM was not appropriate for all of the</p> <p>16 companies because they either couldn't afford it</p> <p>17 or didn't have the capabilities to do it.</p> <p>18 I know that J&J decided, "Yeah,</p> <p>19 we're going to -- we're going to spring for the</p> <p>20 resources and we will be doing it," and I know</p> <p>21 that they engaged in -- in TEM as well.</p> <p>22 Q. And so -- but my question is</p> <p>23 different.</p> <p>24 You said you're not a testing</p>	<p style="text-align: right;">Page 480</p> <p>1 MR. TISI: Let me ask you.</p> <p>2 How much time do you have?</p> <p>3 THE COURT REPORTER: I have to</p> <p>4 figure that out.</p> <p>5 MR. TISI: Let's go off the</p> <p>6 record.</p> <p>7 (Recess: 5:29 p.m. -</p> <p>8 5:31 p.m.)</p> <p>9 FURTHER EXAMINATION</p> <p>10 BY MR. TISI:</p> <p>11 Q. You had talked about the additional</p> <p>12 of time you spent with the Texas AG in another</p> <p>13 case I must have missed in your report.</p> <p>14 A. I'm sorry. What?</p> <p>15 Q. The Texas AG case.</p> <p>16 A. The Texas AG case?</p> <p>17 Q. I'm sorry. The Mississippi AG case.</p> <p>18 I'm sorry.</p> <p>19 You did work on the Mississippi AG</p> <p>20 case?</p> <p>21 A. Oh, last fall.</p> <p>22 Q. Did you -- did you bill separately</p> <p>23 for that?</p> <p>24 A. It was like I usually bill.</p>
<p style="text-align: right;">Page 479</p> <p>1 expert. You just, again, said that you're not</p> <p>2 opining on testing.</p> <p>3 But in a -- in a long answer at</p> <p>4 11:25 this morning, one of the things you said was</p> <p>5 J&J went beyond industry standards.</p> <p>6 On what basis do you say that?</p> <p>7 A. Because after in the 1970s and later</p> <p>8 the FDA recognized this, I think in -- I can't</p> <p>9 remember if it was 1984 or what year it was.</p> <p>10 1986. That the FDA reaffirmed J4-1 as the valid</p> <p>11 standing testing procedure, and I know that from</p> <p>12 the mid-1970s that J&J was -- was using TEM.</p> <p>13 Q. As a -- as an organizational</p> <p>14 behavioralist, do you believe that a company has a</p> <p>15 duty to provide a warning to its customers -- to</p> <p>16 its customers if they know its product may cause</p> <p>17 disease?</p> <p>18 A. Again, I am not the person to ask on</p> <p>19 warnings. I mean, if -- I am just not -- I'm not</p> <p>20 opining on the warnings.</p> <p>21 MR. EWALD: By the way, you</p> <p>22 got three minutes.</p> <p>23 MR. GOLOMB: Do you want the</p> <p>24 time?</p>	<p style="text-align: right;">Page 481</p> <p>1 Q. All-inclusive? But was it in that</p> <p>2 in addition to the 4 or \$500,000 or is that</p> <p>3 included?</p> <p>4 A. No, that's included.</p> <p>5 Q. Okay. Do you know whether or not --</p> <p>6 these bills that we got were dated April and May</p> <p>7 of 2024.</p> <p>8 Were those -- do you know whether or</p> <p>9 not the Analysis Group had received payments</p> <p>10 periodically and previously four years in addition</p> <p>11 to the amounts that were listed in that report --</p> <p>12 in this -- in these monthly billing statements, or</p> <p>13 do you know anything about that?</p> <p>14 A. If you're asking whether I was</p> <p>15 working with a team, as I've described in here --</p> <p>16 Q. No, that's not my question.</p> <p>17 A. -- I was working with a team.</p> <p>18 Q. I may be unclear.</p> <p>19 The documents that we have on</p> <p>20 Exhibit Number 48 show billing in April and May of</p> <p>21 2024.</p> <p>22 A. Uh-huh.</p> <p>23 Q. Work had been ongoing from 2019?</p> <p>24 A. Correct.</p>

<p style="text-align: right;">Page 482</p> <p>1 Q. Okay. I assume they didn't wait 2 five years to actually get paid? 3 A. I imagine they haven't. I don't 4 know how they billed, but I;m imagining that they 5 billed. 6 Q. All right. 7 A. Because I had a very big team when I 8 originally started the work. 9 Q. All right. So, so in addition to 10 the \$276,000, there were additional bills for the 11 team that you worked with that went beyond that 12 \$276,000, correct? 13 A. I -- I -- yes. 14 Q. Okay. 15 A. I believe that. I don't know what 16 they are. 17 Q. And we would only know that if we 18 got the bills from -- from the Texas -- from AG, 19 correct? 20 A. Yes. 21 Q. And would those monthly bills show 22 generally when you did the bulk of your work? 23 A. I -- that's how I -- I don't know 24 anything about AG's bills. I only know about my</p>	<p style="text-align: right;">Page 484</p> <p>1 A. I have worked with a variety of 2 people. 3 Q. Were there people you worked with at 4 the beginning who left the company? 5 A. I don't know if they left the 6 company, but these people I worked with recently 7 on this project, and I think I worked with -- with 8 subsets of them over time. 9 Q. Are any of them epidemiologists, to 10 your knowledge? 11 A. Not that I know of. 12 Q. Were any of them asbestos experts? 13 Do you know? 14 A. I -- 15 MR. EWALD: Objection to form. 16 BY MR. TISI: 17 Q. Were any of them toxicologists? Do 18 you know? 19 A. As I said, I think they have 20 graduate degrees, and I don't know what everybody 21 studied. 22 Q. Were most of them MBAs? 23 A. Not -- that one person has -- has a 24 PhD. I think the others.</p>
<p style="text-align: right;">Page 483</p> <p>1 own. 2 Q. And the people who are listed 3 here -- Ms. Comeaux, Wewel, Kellachan -- do they 4 have a technical or scientific background? Are 5 they paralegals? What are they? 6 A. They're PhDs. They're -- they have 7 MBAs. They have graduate degrees. They're 8 research analysts. I don't know about all of them 9 but -- 10 Q. Okay. We'll find that out. 11 A. -- I know about the ones I worked 12 with, and as I said, I described it in my 13 methodology. 14 Q. And were there different people who 15 you worked with over time? I mean, have you 16 ever -- 17 A. The four people that I worked with 18 on this report right here are Kris Comeaux, 19 Solvejg Wewel, Dylan Kellachan, and Conlan Orino. 20 Q. Okay. 21 A. And the others were -- were 22 additional researchers. 23 Q. Have you worked with them since the 24 very beginning?</p>	<p style="text-align: right;">Page 485</p> <p>1 Q. Do they have any scientific or 2 technical knowledge, to your knowledge? 3 A. They absolutely might have in their 4 undergraduate degrees, and I don't know about 5 that. 6 Q. But not in their graduate degrees, 7 to your knowledge? 8 A. I don't -- yeah, as far as I know. 9 MR. EWALD: That's it. Take a 10 break. 11 MR. TISI: Thank you. Have a 12 good day. 13 MR. EWALD: I'm going to ask 14 some questions. 15 MR. TISI: Oh, you're going to 16 ask questions? 17 MR. EWALD: Yeah. Yeah. Give 18 me two minutes. 19 (Recess: 5:35 p.m. - 20 5:40 p.m.) 21 EXAMINATION 22 BY MR. EWALD: 23 Q. Okay. Dr. Sutcliffe, I'm going to 24 ask you some -- some questions in response to</p>

<p style="text-align: right;">Page 486</p> <p>1 others that were asked by counsel, but we've 2 discussed over the break that one issue that you 3 wanted to clarify. 4 A. (Nods head). 5 Q. And so related to the attribution 6 question, and so I'll just ask you what you want 7 to clarify and I'll ask you follow-up questions. 8 MR. GOLOMB: This is to the 9 attribution question? 10 THE WITNESS: Yes. 11 MR. EWALD: Yeah. 12 MR. GOLOMB: What is the 13 attribution question? 14 MR. TISI: Let's hear the 15 answer. This is about sensemaking. 16 (Laugh). 17 BY MR. EWALD: 18 Q. All right. Please, go ahead. 19 A. So you asked me a question about, 20 like, a stake in the company or something like 21 that related to the bill from AG, and I 22 misunderstood it or just was interpreting. 23 I -- I -- I don't know specifically 24 about that bill, but there is what -- what AG</p>	<p style="text-align: right;">Page 488</p> <p>1 And so are you now saying that in 2 addition to that 4 or \$500,000, that you're also 3 getting a percentage of the 285,000 that was 4 billed -- 5 A. I -- 6 Q. Let me just finish the question. 7 A. Okay. 8 Q. That you're getting a percentage of 9 the 285,000 that was billed by the other nine 10 people? 11 MR. TISI: Or more because it 12 goes back. That was only last month. 13 MR. GOLOMB: No, no. Right, 14 but for these bills. 15 THE WITNESS: I don't -- I get 16 an additional payment. I don't know how 17 much it is and I don't know how it's -- 18 how it's established. But I just -- I'm 19 sorry I can't be more specific. I just 20 -- I believe it's based on the amount of 21 work that -- that AG has done. 22 BY MR. GOLOMB: 23 Q. Okay. So just to be clear, so 24 you're getting -- although you don't know what it</p>
<p style="text-align: right;">Page 487</p> <p>1 discusses as an attribution, which is a small 2 payment that I get. And I don't know specifically 3 what it is, but it relates to the work that's been 4 done in the company on this case. 5 MR. GOLOMB: So just -- 6 MR. EWALD: I'll go ahead and 7 I'll pass the witness for this purpose. 8 I have other questions. 9 MR. GOLOMB: Yeah, I got it. 10 FURTHER EXAMINATION 11 BY MR. GOLOMB: 12 Q. So I'm not clear. So I'm going to 13 ask you some questions about what you just said. 14 So you billed on your own 15 letterhead, and we've been using the number -- it 16 is what it is -- but the 4 to \$500,000 on your own 17 letterhead. You send that to AG? 18 A. Correct. 19 Q. And then AG submits it to -- to J&J? 20 A. Correct. 21 Q. And then J&J sends a check to AG, 22 and then you get that full 4 to \$500,000? 23 A. Whatever I've billed, correct. 24 Q. Right, whatever you billed.</p>	<p style="text-align: right;">Page 489</p> <p>1 is, you're getting a percentage of their work, but 2 they're not getting a percentage of your work? 3 A. Correct. 4 MR. GOLOMB: Okay. 5 MR. TISI: I just have a 6 follow-up on that. 7 THE WITNESS: I mean, I don't 8 even know whether I would call it a 9 percentage of their work, but I don't 10 know how it works. 11 FURTHER EXAMINATION 12 BY MR. TISI: 13 Q. I'm just a little bit confused 14 because I'm trying to get this. 15 The \$278,000 which were billed in 16 April and May of this year? 17 A. True. 18 Q. Okay. Were there other additional 19 bills by AG for the work that they collaborated on 20 with you that go back in time in addition to the 21 \$278,000? 22 A. They've been -- I've had a team of 23 people -- 24 Q. For four years?</p>

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<p>1 A. -- at AG for four years.</p> <p>2 Q. So they --</p> <p>3 A. They bill for their work.</p> <p>4 Q. And so they could have billed</p> <p>5 another \$700,000 for all we know?</p> <p>6 A. They could have billed. I'm sure</p> <p>7 they billed a lot more because this was an</p> <p>8 incredibly intensive process.</p> <p>9 Q. Okay. And you get a percentage</p> <p>10 of -- let's say they billed a million dollars over</p> <p>11 the past -- over the past four, five years,</p> <p>12 including that.</p> <p>13 Just hypothetically, you would get a</p> <p>14 percentage of that in addition to the 4 or</p> <p>15 \$500,000 you directly billed?</p> <p>16 A. Correct.</p> <p>17 MR. TISI: Okay. That I</p> <p>18 appreciate it.</p> <p>19 THE WITNESS: I hope you</p> <p>20 understand.</p> <p>21 MR. GOLOMB: Why wasn't that</p> <p>22 turned over?</p> <p>23 MR. EWALD: Why wasn't what</p> <p>24 turned over?</p>	<p>1 else -- I mean, this report -- I mean,</p> <p>2 look, you keep referring to --</p> <p>3 THE COURT REPORTER: Still on</p> <p>4 the record?</p> <p>5 MR. EWALD: We're on the</p> <p>6 record.</p> <p>7 MR. GOLOMB: We're on the</p> <p>8 record.</p> <p>9 MR. TISI: You keep referring</p> <p>10 to Dr. Kessler, right?</p> <p>11 MR. EWALD: Right.</p> <p>12 MR. TISI: Dr. Kessler you got</p> <p>13 all the bills relating to his report that</p> <p>14 he's billing the MDL, right?</p> <p>15 MR. EWALD: Right.</p> <p>16 MR. TISI: This report is a</p> <p>17 60-page report that was apparently done</p> <p>18 over time.</p> <p>19 MR. EWALD: It's actually an</p> <p>20 82-page report.</p> <p>21 MR. TISI: Single space with</p> <p>22 400 footnotes --</p> <p>23 MR. EWALD: Right.</p> <p>24 MR. TISI: -- with appendices</p>
Page 491	Page 493
<p>1 MR. GOLOMB: These bills.</p> <p>2 MR. EWALD: The --</p> <p>3 MR. GOLOMB: We don't have a</p> <p>4 single bill from her, not at all.</p> <p>5 THE WITNESS: No, I thought</p> <p>6 there --</p> <p>7 MR. TISI: \$11,000.</p> <p>8 MR. EWALD: You were</p> <p>9 provided -- you were provided two</p> <p>10 invoices --</p> <p>11 MR. GOLOMB: But they were</p> <p>12 all --</p> <p>13 MR. EWALD: -- for the period</p> <p>14 of time for her work during this case.</p> <p>15 MR. TISI: For \$11,000.</p> <p>16 MR. EWALD: No. Look at</p> <p>17 the -- look at the bill.</p> <p>18 MR. TISI: Look at the bill.</p> <p>19 MR. EWALD: There's two bills.</p> <p>20 There's 10 for 11 and the other one is.</p> <p>21 That's the hours spent in April and May</p> <p>22 for her.</p> <p>23 MR. TISI: And she's done</p> <p>24 nothing else on this case. Everything</p>	<p>1 in the middle over time, that it</p> <p>2 developed over time. We have not</p> <p>3 gotten -- I've gotten bills for this</p> <p>4 witness for like 11 or \$12,000.</p> <p>5 MR. EWALD: Right.</p> <p>6 MR. TISI: I mean --</p> <p>7 MR. EWALD: We can talk more</p> <p>8 about it.</p> <p>9 MR. TISI: This I'm talking</p> <p>10 about it. I've got no bills for this</p> <p>11 report.</p> <p>12 MR. EWALD: You have the bills</p> <p>13 for this report.</p> <p>14 MR. TISI: No, I have the</p> <p>15 bills -- I have the bills --</p> <p>16 MR. EWALD: No. Let me</p> <p>17 finish. Let me finish.</p> <p>18 There is, which you didn't</p> <p>19 choose to ask about. There is a prior</p> <p>20 report that was created for the Sandoval</p> <p>21 case that's disclosed in her report.</p> <p>22 There was -- this bill is on the report</p> <p>23 in that.</p> <p>24 MR. TISI: That isn't true.</p>

<p style="text-align: right;">Page 494</p> <p>1 We're going to go through.</p> <p>2 MR. EWALD: No, we're not</p> <p>3 going to go through.</p> <p>4 MR. TISI: No, I'm now going</p> <p>5 on the record. I actually -- I actually</p> <p>6 drafted, and I said for any of the work</p> <p>7 done. And I asked you in this notice of</p> <p>8 deposition.</p> <p>9 MR. EWALD: I know, and we</p> <p>10 agreed to give you for the bills for this</p> <p>11 case. This case meaning --</p> <p>12 MR. TISI: This case.</p> <p>13 MR. EWALD: -- in this case.</p> <p>14 And so if you want to go back</p> <p>15 and we want to get all of the bills for</p> <p>16 your experts when they billed upon prior</p> <p>17 reports.</p> <p>18 MR. TISI: But they would --</p> <p>19 this is the exact same report.</p> <p>20 THE WITNESS: It is not.</p> <p>21 MR. EWALD: It's not the exact</p> <p>22 same report.</p> <p>23 THE WITNESS: No, it is not</p> <p>24 the same.</p>	<p style="text-align: right;">Page 496</p> <p>1 MR. TISI: I'm more than happy</p> <p>2 to take a look at this issue.</p> <p>3 MR. EWALD: I -- okay. So</p> <p>4 I'll go back to my questioning.</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MR. EWALD:</p> <p>7 Q. Okay. Dr. Sutcliffe.</p> <p>8 MR. EWALD: I have nothing new</p> <p>9 for you. So if you have to leave, you</p> <p>10 know, that's fine.</p> <p>11 MR. GOLOMB: I'm sorry?</p> <p>12 MR. EWALD: I have nothing new</p> <p>13 for you, but if you want to stay, you're</p> <p>14 welcome to.</p> <p>15 MR. GOLOMB: All right.</p> <p>16 BY MR. EWALD:</p> <p>17 Q. I wanted to ask you a little bit</p> <p>18 about what was marked as Exhibit 1, your</p> <p>19 curriculum vitae, and in particular there's a</p> <p>20 discussion under the "Honors, Awards and</p> <p>21 Recognition."</p> <p>22 So in 2021, "Appointed by the</p> <p>23 National Academies of Science, Engineering and</p> <p>24 Medicine Transportation Research Board to a</p>
<p style="text-align: right;">Page 495</p> <p>1 MR. EWALD: You didn't even</p> <p>2 know -- you didn't even know the Sandoval</p> <p>3 report existed two minutes ago. How do</p> <p>4 you know it's the exact same report?</p> <p>5 MR. TISI: Let me put it this</p> <p>6 way. I mean, let me -- all right. We're</p> <p>7 going to deal with this.</p> <p>8 MR. EWALD: Right.</p> <p>9 MR. TISI: We are definitely</p> <p>10 going to deal with this.</p> <p>11 MR. EWALD: Great, and I also</p> <p>12 want to deal with them as I asked at the</p> <p>13 time for Longo's bill. I see take</p> <p>14 them --</p> <p>15 MR. TISI: All right. Longo's</p> <p>16 bill, he had separate reports in</p> <p>17 different cases. Completely separate</p> <p>18 reports.</p> <p>19 MR. EWALD: This is a separate</p> <p>20 report in another case. Exact same</p> <p>21 thing.</p> <p>22 MR. TISI: It is not. Come</p> <p>23 on, John.</p> <p>24 MR. EWALD: Okay.</p>	<p style="text-align: right;">Page 497</p> <p>1 Committee on Emerging Trends in Aviation Safety."</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Can you tell me what that is?</p> <p>5 A. It is a committee that I was</p> <p>6 appointed to in 2021 that deals with the emerging</p> <p>7 risks in aviation safety, and it was mandated by</p> <p>8 Congress. And I was asked to be part of it, even</p> <p>9 though, of course, I don't have -- I'm not a pilot</p> <p>10 and not everybody on the committee is a pilot, but</p> <p>11 I didn't have any special -- special insight into</p> <p>12 aviation. But I know organization behavior and I</p> <p>13 know organizational culture issues and other</p> <p>14 issues related to organizational processes.</p> <p>15 Q. And there was -- you said</p> <p>16 "appointed." I just want to be clear.</p> <p>17 Who -- who appointed you?</p> <p>18 A. The National Academies of Science,</p> <p>19 Engineering and Medicine Transportation Research</p> <p>20 Board.</p> <p>21 Q. Okay. And if you had to describe</p> <p>22 generally what methodology you were using in your</p> <p>23 work on that, how would you describe it?</p> <p>24 A. I think it's -- it's similar to the</p>

<p style="text-align: right;">Page 498</p> <p>1 methodology that we're using here and particularly</p> <p>2 the related to, you know, getting information and</p> <p>3 creating some research questions, and now we're --</p> <p>4 we're being more descriptive in terms of talking</p> <p>5 about recommendations.</p> <p>6 Q. And so -- sorry.</p> <p>7 A. And we published one paper -- or not</p> <p>8 a paper. We published one book (indicates) --</p> <p>9 book-length report in, I think it was, 2022. And</p> <p>10 we are in the process now of just finalizing our</p> <p>11 second report that will be published this summer.</p> <p>12 Q. Okay. And in your what was marked</p> <p>13 as Exhibit 2 in front of you, I just want to just</p> <p>14 ask you: There was a fair number of questions</p> <p>15 from plaintiffs' counsel about aspects that are</p> <p>16 not included in your report.</p> <p>17 But if the court and if anyone else</p> <p>18 is looking for the opinions that you are offering</p> <p>19 in this case and the methodologies that you</p> <p>20 employed, are those included within what was</p> <p>21 marked as Exhibit 2?</p> <p>22 A. Correct.</p> <p>23 Q. And when you look at the assignment</p> <p>24 that you had in this case, is what is stated in</p>	<p style="text-align: right;">Page 500</p> <p>1 ERRATA SHEET</p> <p>2</p> <p>3 Page No. _____ Line No. _____ Change to: _____</p> <p>4 _____</p> <p>5 Page No. _____ Line No. _____ Change to: _____</p> <p>6 _____</p> <p>7 Page No. _____ Line No. _____ Change to: _____</p> <p>8 _____</p> <p>9 Page No. _____ Line No. _____ Change to: _____</p> <p>10 _____</p> <p>11 Page No. _____ Line No. _____ Change to: _____</p> <p>12 _____</p> <p>13 Page No. _____ Line No. _____ Change to: _____</p> <p>14 _____</p> <p>15 Page No. _____ Line No. _____ Change to: _____</p> <p>16 _____</p> <p>17 Page No. _____ Line No. _____ Change to: _____</p> <p>18 _____</p> <p>19 Page No. _____ Line No. _____ Change to: _____</p> <p>20 _____</p> <p>21 Page No. _____ Line No. _____ Change to: _____</p> <p>22 _____</p> <p>23 Page No. _____ Line No. _____ Change to: _____</p> <p>24 _____</p>
<p style="text-align: right;">Page 499</p> <p>1 paragraphs 9 and 10 an accurate statement of the</p> <p>2 assignment that you understand to have had in this</p> <p>3 case?</p> <p>4 A. Yes.</p> <p>5 Q. And does anything that you've heard</p> <p>6 in questions about today change the opinions that</p> <p>7 you are -- conclusions that you reached in the</p> <p>8 report that was marked as Exhibit 2?</p> <p>9 A. No.</p> <p>10 MR. EWALD: Okay. I have no</p> <p>11 further questions.</p> <p>12 MR. TISI: No further</p> <p>13 questions. Have a good day.</p> <p>14</p> <p>15 (Signature not waived, the</p> <p>16 deposition concluded at 5:50 p.m.)</p> <p>17</p> <p>18 * * *</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 501</p> <p>1 DECLARATION UNDER PENALTY OF PERJURY</p> <p>2</p> <p>3</p> <p>4 I declare under penalty of</p> <p>5 perjury that I have read the entire transcript of</p> <p>6 my Deposition taken in the captioned matter</p> <p>7 or the same has been read to me, and</p> <p>8 the same is true and accurate, save and</p> <p>9 except for changes and/or corrections, if</p> <p>10 any, as indicated by me on the DEPOSITION</p> <p>11 ERRATA SHEET hereof, with the understanding</p> <p>12 that I offer these changes as if still under</p> <p>13 oath.</p> <p>14</p> <p>15 Signed on the _____ day of</p> <p>16 _____, 2024.</p> <p>17</p> <p>18 _____</p> <p>19 KATHLEEN M. SUTCLIFFE, PHD</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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1 CERTIFICATE OF REPORTER

2 DISTRICT OF COLUMBIA)

3 I, Denise Dobner Vickery, a

4 Registered Court Reporter and Notary Public of

5 the District of Columbia, do hereby certify that

6 the witness was first duly sworn by me.

7 I do further certify that the

8 foregoing is a verbatim transcript of the

9 testimony as taken stenographically by me at the

10 time, place and on the date herein set forth, to

11 the best of my ability.

12 I do further certify that I am

13 neither a relative nor employee nor counsel of

14 any of the parties to this action, and that I am

15 neither a relative nor employee of such counsel,

16 and that I am not financially interested in the

17 outcome of this action.

18

19

20 

21 DENISE DOBNER VICKERY, CRR,RMR

22 Notary Public in and for the

23 District of Columbia

24 My Commission expires: March 14, 2028

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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